



State of Washington
DEPARTMENT OF GENERAL ADMINISTRATION
Office of State Procurement
210 11th Avenue SW, Rm. 201, • Olympia, Washington 98504-1017 • (360) 902-7400
<http://www.ga.wa.gov>

Invitation for Bid (IFB) # 01910

**The State of Washington on behalf of
The Western States Contracting Alliance (WSCA)
A Multi-State Contract for:
Breast Pumps and Related Accessories**

Solicitation Number
01910

Pre-bid Conference Date & Time
10/20/2010 1:00 PM PDT

Bid Due Date & Time
11/2/2010 2:00 PM PDT

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*M. Cox
posted
10/11/10*

To request this information in alternative formats call (360) 902-7400, or TDD (360) 664-3799.
<http://www.ga.wa.gov/webs/>

Bids must be received & stamped on or before the Proposal due date and time at this location:

210 11th Avenue SW, Rm. 201
General Administration Building
Olympia WA 98504-1017

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1 SUMMARY OF OPPORTUNITY

1.1 PURPOSE

The purpose of this Solicitation is to establish a replacement Contract(s) for the purchase of Manual & Electric Breast Pumps and related accessories for the Western States Contracting Alliance (WSCA), the State of Washington, and other Participating Entities. The awarded Contract(s) will replace *Contract #10305 Breast Pumps, WSCA/WIC Programs* due to expire on January 17, 2011.

Purchases will be made by authorized, participating members of the Western State Contracting Alliance (WSCA) and their Women, Infants and Children (WIC) programs and other Participating Entities.

1.2 CONTRACT SCOPE

See Section 1.1 of the Model Contract.

1.3 PARTICIPATING ENTITIES

See Section 1.4 of the Model Contract.

1.4 ESTIMATED USAGE

See Section 1.5 of the Model Contract.

1.5 CONTRACT TERM

See Section 1.6 of the Model Contract.

1.6 EXPECTED RESULT

The State of Washington seeks to establish a multi-state Contract(s) for the as-needed purchase of Breast Pumps and related accessories for use by Participating Entities.

1.7 AWARD

On behalf of WSCA, the State intends to award one or more contracts as a result of this solicitation. Award shall be made to the responsive, responsible Bidder(s) receiving the highest evaluation point totals, in accordance with the evaluation criteria set forth in Section 6 Submittal, Evaluation, and Contract Award.

Participating Entities may form contracts with any of awarded contractors in conformity with their respective state laws through the execution of a Participating Addendum.

The State reserves the right to contract with any of the Bidders to support the maintenance of existing equipment in use at WIC offices statewide.

2 SOLICITATION OVERVIEW

2.1 ACQUISITION AUTHORITY

The Washington State Department of General Administration (GA), Office of State Procurement (OSP) issues this Solicitation acting under the authority of its enabling legislation Revised Code of Washington (RCW) 43.19 which establishes GA and regulates the manner in which state agencies may acquire general goods and services.

2.2 STANDARD DEFINITIONS

See section Appendix C Standard Definitions

2.3 SOLICITATION AND CONTRACT FORMATION

The Bidder by submitting a Bid is making a written firm offer that if awarded by OSP during the allowed time period commits the Proposer, by Contract, to provide materials, supplies, services, and/or equipment in response to this Solicitation.

The terms and conditions of the awarded Contract comprise many documents that are incorporated by reference.

A Model Contract is included in Appendix B. In many instances, the solicitation document references and links to the Model Contract as opposed to duplicating language. This was done to protect against the possibility of language inconsistencies. In addition to the Bidder's Authorized Offer, Proposers must also sign and return the Contract document with their Response, without modification or contingency. Any modifications or contingencies submitted by the Proposer will not be accepted.

For any Solicitation or category within a Solicitation, OSP reserves the right to award by line item, group, aggregately, or all or nothing. For any Solicitation or category within a Solicitation, OSP also reserves the right to make single or multiple awards that may or may not provide the same materials, supplies, services, and/or equipment through the awarded Bidder(s).

The apparent successful Bid(s) is the basis for the Contract(s). Should the State of Washington accept and award the Bid, in part or in full, during the firm offer period, a Contract is formed. It becomes binding only when accepted and subsequently awarded by the State of Washington in writing and by signature.

The State, at its sole discretion, reserves the right to negotiate improvements to the Responsive, Responsible Bidder whose Response received the highest number of points, in accordance with RCW 43.19.1911 (6).

Before accepting and awarding the Bidder's firm offer, OSP may edit the Model Contract and other documents to include but not limited to specific details such as; administrative changes, the Bidders name, and information, etc. from the apparent successful Bid. The edited Contract will be presented to the Apparent Successful Bidder for signature.

The Apparent Successful Bidder is expected to sign the edited Contract or documents within ten (10) business days of its receipt. If the apparent successful Bidder fails to sign the edited Contract within the allotted ten (10) business day time frame, OSP may:

- Enforce the Contract in its initial unedited Model Contract form.
- Consider the successful Bidder to be non-responsive for failure to sign the edited Contract. In this case, the apparent successful Bidder may not Bid on the same commodity or service if the Solicitation is subsequently reissued by the OSP.
- Award the Contract to the next ranked Bidder(s) in succession,
- Cancel the Solicitation, or
- Cancel and reissue this Solicitation.

2.4 NO BEST AND FINAL OFFER

The OSP reserves the right to make an award without further discussion of the Response submitted; *i.e.*, there will be no best and final offer request, except possibly as a tie breaker. Therefore, the Response should be submitted on the most favorable terms that Bidder intends to offer.

2.5 SOLICITATION AMENDMENTS

Prior to submittal due date and time, OSP reserves the right to change portions of this IFB. Any changes or corrections will be by one or more written amendment(s), dated, attached to or incorporated in and made a part of this solicitation document.

All changes must be authorized and issued in writing by the Procurement Coordinator. If there is any conflict between amendments, or between an amendment and the IFB, whichever document was issued last in time shall be controlling.

Only Bidders who have properly registered and downloaded the original solicitation directly via WEBS system will receive notification of amendments and other correspondence pertinent to the procurement. Bidders may be required to sign and return Amendments as a Submittal with their Bid. Bidders must carefully read each Amendment to ensure they have met all Submittal requirements of the Solicitation.

2.6 INCORPORATION OF DOCUMENTS INTO CONTRACT

It is imperative that the Bidder read, understand, and accept all parts of the Solicitation that includes any and all appendices, embedded files, and amending documents, as they become part of the Contract upon award. It is the Bidder's responsibility to read both the Solicitation and the Model Contract in their entirety.

The WSCA Standard Terms and Conditions are attached as Appendix D and incorporated by this reference. In the event of any inconsistencies, the State of Washington's terms and conditions shall take precedence.

Participating Entities may utilize the resulting Contract(s) by signing a Participating Addendum with the awarded Bidder(s). A Participating Addendum:

- Must be executed by any Participating Entity that decides to adopt a WSCA contract.
- Shall be executed for each contractor by the Participating Entity desiring to use their contract.
- Allows for each Participating Entity to add terms and conditions that may be unique to their State.

The Participating Entity and the Contractor shall negotiate and agree upon any additional terms and conditions prior to the signing and execution of the Participating Addendum. Participating Entities are not mandated to sign a Participating Addendum with all awarded vendors. Additional Participating Entities may be added with the consent of the contractor and the Lead State (on behalf of WSCA) through execution of Participating Addendums.

2.7 RIGHT TO CANCEL

The OSP reserves the right to cancel or reissue all or part of this Solicitation at any time as allowed by law without obligation or liability.

2.8 MINORITY AND WOMEN OWNED BUSINESS ENTERPRISES (MWBE)

In accordance with the legislative findings and policies set forth in RCW 39.19, the State encourages participation in all of its Contracts by Minority and Woman Owned Business Enterprise (MWBE) firms either self-identified or certified by the Office of Minority and Women's Business Enterprises (OMWBE). While the state does not give preferential treatment, it does seek equitable representation from the minority and women's business community.

Participation may be either on a direct basis in response to this Solicitation or as a Subcontractor to a Contractor. However, unless required by federal statutes, regulations, grants, or Contract terms referenced in the original Solicitation, no preference will be included in the evaluation of Bids and Proposals, no minimum level of MWBE participation shall be required as condition for receiving an award, and Bids and Proposals will not be evaluated, rejected or considered non-responsive on that basis.

Any affirmative action requirements set forth in federal regulations or statutes included or referenced in the original Solicitation will apply. Bidders may contact Office of Minority and Woman Owned Business Enterprise (OMWBE) to obtain information on certified firms for potential sub-contracting arrangements.

Nothing in this section is intended to prevent or discourage Bidders from inviting others from participation from non MWBE firms as well as MWBE firms.

Bidders who are MWBE or intend to use MWBE Subcontractors are encouraged to identify the participating firm on the Bidder Profile Submittal located in Section 6.2.4 of the Solicitation. *See also Section 6.5 MINORITY AND WOMEN'S BUSINESS ENTERPRISE (MWBE) PARTICIPATION of the Model Contract*

3 TIMELINE

3.1 PROCUREMENT SCHEDULE

The dates listed below represent the projected procurement schedule. OSP reserves the right to change the schedule. Notification of amendments to the procurement schedule prior to Bid opening will be sent electronically to all properly registered users of the WEBS.

Changes to the Procurement Schedule after Bid Opening will be communicated only to Bidders that submitted a Bid.

Projected Schedule of Events

Date	Time	Event
October 1, 2010		Issue Solicitation document (Available for download from www.ga.wa.gov/webs)
October 20 through November 1, 2010		Question and Answer Period
October 20, 2010	1:00 PM PDT	Optional Pre-Bid Conference (see Section 3.2 below for location/directions, etc.)
October 21, 2010 until Deadline for Bid Submittals		Amendment issued, if applicable (Bidders should begin checking the website for any amendments)
November 2, 2010	2:00 PM PDT	Bid Submittals Due. Bid Submittals received after 2:00 PM PDT (using official bid clock) will be rejected.
December 3, 2010		Notice of Intent to Award
December 10, 2010		Anticipated Award Date

NOTE: Bid information, including price sheets, will not be available for public disclosure until after award of the contract consistent with RCW 43.19.1911(8). At bid due date and time, only the name of the Bidder and time of Bid receipt will be read aloud. After award, information regarding results of the solicitation may be obtained by contacting the Procurement Coordinator.

3.2 PRE-BID CONFERENCE

An optional Pre-Bid Conference to address solicitation requirements will be held at the time and location indicated below. While attendance is not mandatory, Vendors are encouraged to attend and actively participate. If interpretations, specifications, or other changes to the solicitation are required as a result of the Pre-Bid Conference, the Procurement Coordinator will make amendments to the solicitation and provide those amendments by posting them on WEBS at www.ga.wa.gov/webs.

Assistance for persons with disabilities who wish to attend is available by prior arrangement with the Office of State Procurement (OSP). Contact the Procurement Coordinator identified on the face page of this Solicitation.

Pre Bid Date: October 20, 2010

Pre Bid Time: 1:00 PM PDT

Pre Bid Location: General Administration Building
210 11th Avenue SW, Rm. 201
Olympia WA 98504-1017

For a site map to the Capitol Campus, click <http://www.ga.wa.gov/images/Campus-Map.pdf>

Driving directions and parking information
<http://www.ga.wa.gov/campus/parking.htm>

3.3 SOLICITATION OPENING PROTOCOL

Only the name of the Bidder and the time of receipt are read aloud at the time of the Bid/Proposal opening. The reading does not determine any award, responsibility of the Bidder, or responsiveness of the Bid. Bidder attendance at the Bid opening is not required.

3.4 CONTRACT INFORMATION AVAILABILITY AFTER AWARD

Upon award, written notification will be sent to all Bidders. After award, information regarding results of the solicitation may be obtained by contacting the Procurement Coordinator.

Bidders may submit a public disclosure request to either schedule an appointment to review the procurement file or obtain specific documents.

3.5 PROTEST PROCEDURES

Protests shall be filed and resolved in accordance with Appendix A Protest Procedure.

4 INSTRUCTIONS TO BIDDERS

This section contains instructions to Bidders regarding the preparation and submission of a Bid.

4.1 AUTHORIZED COMMUNICATION

Upon release of this IFB, all Bidder communications concerning this solicitation must be directed to the Procurement Coordinator listed below. Unauthorized contact regarding this solicitation with other state employees involved with the solicitation may result in disqualification. All oral communications will be considered unofficial and non-binding on the State. Bidders should rely only on written statements issued by the Procurement Coordinator.

Procurement Coordinator:	Melissa Cox
Agency Name:	Department of General Administration Office of State Procurement (OSP)
Agency Address:	Department of General Administration 210 11th Avenue SW, Room 201 P. O. Box 41017 Olympia, Washington 98504-1017
E-mail:	melissa.cox@ga.wa.gov
Telephone:	360.902.7439
Fax:	360.586.2426

4.2 BIDDER COMMUNICATION RESPONSIBILITIES

Bidders will be responsible for communicating to the Procurement Coordinator any issues, exceptions, additions or omissions concerning the solicitation on or before the Bid due date and time. Where requirements appear to prohibit or restrict your firm's participation, an explanation of the issue with suggested alternative language must be submitted in writing to the Procurement Coordinator by the deadline for Bidder Questions, Comments, and Complaints consistent with section 3.1 Procurement Schedule. The solicitation process may continue. If changes result, written amendments will be made by the Procurement Coordinator and provided by posting them on WEBS as indicated above.

4.3 BIDDER AUTHORIZED REPRESENTATIVE

Bidder must designate an Authorized Representative who will be the principal point of contact for the OSP Contract Administrator for the duration of this IFB process. The Bidder may record the name of the representative in the Bidder Profile form provided in the Submittal, Evaluation, and Award Section.

4.4 WASHINGTON ELECTRONIC BUSINESS SOLUTION (WEBS)

Bidders are solely responsible for:

1. Properly registering with the Department of General Administration's WEBS at <http://www.ga.wa.gov/webs>.
2. Maintaining an accurate Vendor profile in WEBS
3. Downloading the solicitation consisting of the IFB with all attachments and exhibits related to the solicitation for which you are interested in bidding; downloading all current and subsequent amendments to the solicitation

To ensure receipt of all solicitation documents, the IFB for this solicitation must be downloaded from WEBS. Notification of amendments to the solicitation will only be provided to those Vendors who have registered with WEBS and have downloaded the IFB from WEBS. Failure to do so may result in a potential Bidder having incomplete, inaccurate, or otherwise inadequate information, or a Bidder submitting an incomplete, inaccurate, or otherwise inadequate Bid or Proposal. Bidders and potential bidders accept full responsibility and liability for failing to receive any amendments resulting from their failure to register with WEBS and download the IFB from WEBS, and hold the State of Washington harmless from all claims of injury or loss resulting from such failure.

4.5 PREPARATION OF BID OR PROPOSAL

Original, signed (in ink), sealed Response must be received at the specified location on or before the specified date and time. Time of receipt will be determined by the official time stamp located at the Purchasing Activity. If a Response is late or received at a location other than that specified, it shall be rejected and returned unopened. In the event the official time clock is unavailable, the Bid clerk may establish the official time and take reasonable steps to ensure the integrity of the Response receipt is preserved.

A. FORMAT:

In addition to a hard copy submittal, Bidder will also be required to submit an electronic copy. In the event that the hard copy of the price worksheets and an electronic copy of the price worksheets do not agree, the electronic copy will prevail. Hard copy Responses must be legible and completed in ink or with electronic printer or other similar office equipment, and properly signed by an authorized representative of the Bidder. Electronic Responses must be submitted in the identical format contained in the Solicitation (for example MS Word, MS Excel but not PDF). All changes and/or erasures shall be initialed in ink. Unsigned

Responses will be rejected on opening unless satisfactory evidence was submitted clearly establishing the Bidder's desire and intent to be bound by the Response, such as a signed cover letter. Incomplete or illegible Responses may be rejected.

Note: In a joint effort to save costs, reduce waste and produce energy savings, Bidders are encouraged to use double-sided printing and recyclable materials. Bidders are highly encouraged to refrain from submitting Responses in 3-ring binders, spiral bindings, and/or other non-recyclable presentation folders.

B. IDENTIFICATION AND DELIVERY:

To facilitate proper delivery and processing, Responses must be delivered in sealed envelopes, boxes or other method of containment. Sealed Responses are to be clearly identified on the outside of the package with the following information to the Purchasing Activity at the address below:

Bidder's Address	OFFICE OF STATE PROCUREMENT 210 11th Avenue SW, Rm. 201 Olympia WA 98504-1017
Solicitation Number	Attn: Melissa Cox, Contracts Specialist
Opening date and time	

4.6 BIDDER RESPONSIVENESS

Bidder must respond to each question/requirement contained in this IFB. Failure to comply with any applicable item may result in the Response being deemed non-responsive and disqualified.

The State reserves the right to consider the actual level of Bidder's compliance with the requirements specified in this solicitation and to waive informalities in a Bid Submittal. An informality is defined as an immaterial variation from the exact requirements of the competitive solicitation, having no effect or merely a minor or negligible effect on quality, quantity, or delivery of the supplies or performance of the services being procured, and the correction or waiver of which would not affect the relative standing of, or be otherwise prejudicial to bidders.

4.7 WITHDRAWAL OR MODIFICATION OF BID OR PROPOSAL

Bidders are liable for all errors or omissions contained in their Responses.

- a. **After Response submittal but prior to Bid/Proposal opening:** The Bidder may modify or withdraw his/her Response at any time prior to the due date and time set for Bid/Proposal opening by providing a written request to the Contracts Specialist from an authorized representative of the Bidder.
- b. **After Bid/Proposal opening:** No Response shall be altered or amended. The Contracts Specialist may allow a Response to be withdrawn if the Bidder demonstrates that the prices were miscalculated. A low Bidder, who claims error and fails to enter into a contract with the State of Washington, may not participate

in Bidding on the same commodity or service if the Solicitation is subsequently reissued by the Purchasing Activity.

The Purchasing Activity reserves the right to contact Bidder for clarification of Response contents.

4.8 PROPRIETARY OR CONFIDENTIAL INFORMATION

All Bids and Proposals submitted become the property of the State of Washington and a matter of public record, after the contract has been executed.

Any information contained in the Response that is proprietary or confidential must be clearly designated. Marking of the entire Response or entire sections of the Response as proprietary or confidential will not be accepted nor honored. The OSP will not honor designations by the Bidder where pricing is marked proprietary or confidential. *See also Section 8.4 PROPRIETARY OR CONFIDENTIAL INFORMATION of the Model Contract.*

5 PRICING (COST FACTORS)

5.1 OVERVIEW

The purpose of this section is to address *some* matters that may impact the Bidder's pricing offered in the Bid.

The Solicitation is designed to have the Bidder weigh all cost factors and risk factors and roll them into the unit pricing submitted in the Price Sheet Submittal Section 6.2.14. The State makes no volume commitment in this Solicitation.

5.2 PRICING

All pricing shall include the costs of Bid preparation, servicing of accounts, and compliance with all contractual requirements. During the Contract period, pricing shall remain fixed for the period of time indicated in the Model Contract Submittal.

5.3 PRICE SHEET AND PROMPT PAYMENT DISCOUNT

Bidder must complete the Price Sheet Submittal located as an imbedded file in Section 6.2.12.

If applicable, Bidders shall extend unit pricing as required in the Price Sheet Submittal. In the event of an error in the extension of prices, the unit price shall prevail.

Payment terms, if any, may be recorded on the *Price Sheet Submittal* located in Section 6.2.12 as an embedded file. Bidders are encouraged to propose prompt payment discounts that are 30 days or less. However, only prompt payment discounts that are 30 days or greater will receive consideration in the pricing evaluation. The Bidder must specify on the *Price Sheet Submittal* if Purchase Cards (P-Cards) will be accepted as a method of payment. P-Cards, if offered, shall apply to the Prompt Payment discount.

5.4 ESTIMATE OF QUANTITY AND DESTINATION

Estimates of quantities and delivery destinations are available in Section 6.2.12 Price Sheet Submittal.

5.5 PRICE ADJUSTMENTS

Refer to Appendix B-The Model Contract for details regarding price adjustments.

5.6 PRICING NOT SPECIFIED

Where there is no charge or rate specified for mandatory line items on the Price Sheet Submittal, Bidder must enter N/C (no charge) or 0 (zero), as applicable. If Bidder fails to provide a price, The State will assume and the Bidder agrees the item is free for the life of the Contract.

5.7 SALES TAX

Pricing specified in the *Price Sheet Submittal* is before tax. ***Do not roll tax into the unit price.***

5.8 SHIPPING TERMS

Reference the Shipping and Risk of Loss Section of the Model Contract.

5.9 CONTRACT ADMINISTRATION FEE

The Contract(s) will be subject to a WSCA Administration Fee. Bidder(s) will include this fee in its Bid pricing and not as a separate line item to Participating Entities. The Contractor(s) will collect the fees and distribute the fees to WSCA as outlined below:

WSCA Administration Fee

The WSCA Administration Fee will be one half of one percent (0.5%) on all purchases made under authority of the Contract. Purchases are defined as total invoice price less sales tax. No taxes will be assessed against the WSCA Administration Fee.

The WSCA Administrative fee shall be paid within thirty (30) days after the end of the calendar quarter. Contractor shall indicate the Contract Number #01910 and include with the remittance, a quarterly sales report by WSCA contract participant. The administrative fee shall be paid to:

WSCA/NASPO
NASPO PROGRAM MANAGER
201 EAST MAIN STREET, SUITE 1450
LEXINGTON, KY 40507

In addition to the WSCA Administration Fee as stated above, some Participating Entities may also require an administrative fee, and will be incorporated into the Participating Entity's Participating Addendum. Participating Entity Administrative Fees may be added to the price of each item.

5.10 PRICES IN USA DOLLARS AND EXCHANGE RATES

The prices recorded in U.S. dollars are fixed regardless of market or international exchange rate changes. The State does not consider changes in the international exchange rate in favor of the State as sufficient justification to adjust pricing after Contract award.

5.11 RECIPROCITY PENALTY

Pursuant to RCW 43.19.700, RCW 43.19.702, RCW 43.19.704 and WAC 236-48-085, the State has established a schedule of percentage increases to be added to Bids from Bidders in states that grant a preference to Bidders located in their state or for goods manufactured in their state. The percentages related to each respective state are provided in the Reciprocity List located at <http://www.ga.wa.gov/pca/ recip.htm> and apply only to Bids received from those states listed. In determining whether to assess a percentage increase against a Bidder, and the amount of that increase, the purchasing activity will consider only the business address from which the Bid was submitted.

The appropriate percentage will be added to each Bid bearing the address from a state with in-state preferences rather than subtracting a like amount from Washington State Bidders.

This action will be used only for analysis and award purposes. In no instances shall the increase be paid to a Bidder whose Bid is accepted and who is awarded a Contract.

6 SUBMITTAL, EVALUATION, AND CONTRACT AWARD

6.1 BID OVERVIEW

The Bid must be signed, sealed, delivered before the deadline, and in the format required. Refer to Section 4.5 Preparation of Bids or Proposals for expanded details.

At a minimum, the State must have a complete Bid that meets all material legal requirements and that can be evaluated in conformity with the evaluation methodology.

No rejection notice will be sent to unsuccessful Bidders. Bidders whose solicitations are determined to be non-responsive/responsible will be rejected and will be notified of the reasons for such rejection.

Subject to the provisions of RCW 43.19.1911 and Chapter 236-48 WAC, the State reserves the right to: (1) Waive any informality or administrative concern; (2) Reject any or all solicitations, or portions thereof; (3) Accept any portion of the solicitation unless the Bidder stipulates all or nothing in their solicitation; (4) Cancel a solicitation and re-solicit solicitation; (5) Negotiate with the lowest Responsive and Responsible Bidder to determine if the solicitation can be improved for the Purchasers; (6) Award on an all or none consolidated basis taking into consideration "lifecycle costs"; and (7)

Award in aggregate, by groups, line item, or all or nothing when in the best interest of the state.

6.2 SUBMITTALS

A checklist is provided in the Matrix Summary section below. It is provided as a courtesy only and does not supersede any requirement contained in other parts of the Solicitation.

This Solicitation requires the Bidder to provide Submittals as part of the bid response. As the Submittals are integral to the Bid, a late Submittal, or one received at a location other than that specified shall be rejected, rendering the Bid non-responsive.

The evaluation of some Submittals within your Bid will be pass/fail while others will be scored. Each Submittal has a responsiveness component and a responsibility component. The failure to submit the Submittal(s) may cause your Bid to be rejected for lack of responsiveness. Failure to meet the material requirements of the Submittal may cause your Bid to be rejected for lack of responsibility. It is important that you submit all Submittals in the form requested by the Solicitation or Amendment.

Submittals will be one of two types, self-authored or on a form provided by the State within the Solicitation document in MS Word, MS Excel, or Adobe PDF that can be printed for your use. Bidder may need the latest MS Office software to open the file.

Please identify all pages of your Submittal, including supplemental material with your company name or some other easily identifiable mark or initials.

6.2.1 SOLICITATION SUBMITTAL

Bidders must print and return this Solicitation document in its entirety. Subject to WAC 236-48-071, this includes a signed BIDDER'S AUTHORIZED FIRM OFFER - Certifications and Assurances located at the end of Section 7 below. The State prefers blue ink when signing this document.

6.2.2 AMENDMENT(S) SUBMITTAL

Bidders must print and return any required Solicitation Amendments that are posted after the release of the Solicitation. Subject to WAC 236-48-071, the Amendment will include any signature pages, forms intended by the State, or other instructions to be completed by the Bidder as a Submittal. Any Amendment is provided to your company via WEBS and may or may not require its return as a Submittal. When in doubt, sign and include with your Bid Response. Bidder must also review and comply with the instructions detailed within any Solicitation Amendment.

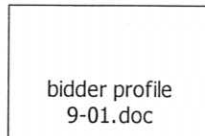
6.2.3 MODEL CONTRACT

Bidders must print, sign, and return the Model Contract document attached as Appendix B. Legible completion by hand is acceptable.

6.2.4 BIDDER PROFILE

The Bidder Profile Form Submittal must be completed and returned with the Bid. The form is provided as an imbedded file below.

This Submittal is NOT scored. Failure to include this Submittal as part of your Bid will not disqualify the Bid. However, should the State request the Submittal as part of a responsibility analysis or if your company is named an apparent successful Bidder, no award will be made and your company may be disqualified unless your company provides the completed document within ten (10) days of the state's request.



6.2.5 DEALER AUTHORIZATION

The Bidder, if other than the manufacturer, shall provide a current, dated, and signed authorization from the manufacturer stating that the Bidder is an authorized distributor, dealer or service representative and is authorized to sell the manufacturer's products to all US States and Territories of the United States. Failure to comply with this requirement may result in Bid rejection. See Section 4.3 DEALER AUTHORIZATION of the Model Contract.

Bidder must maintain its reseller status for the term and any renewals of the resulting Contract.

6.2.6 COMPANY EXPERIENCE/CAPACITY

No form is provided for this Submittal. Bidder must describe their company's experience with the manufacturing and/or distribution of Manual and Electric Breast Pumps, Double Pumping Kits, and Related Accessories to governmental entities of similar size and scope to this Solicitation. Length of Company Experience Submittal shall be no more than **two (2) pages** in length. While the State is not limited in what it can consider, the primary focus is detailed below:

- Describe your company's 2009 gross sales for the United States, the number of state and local governments your company serves, experience with the design, manufacture, marketing, and distribution of Manual and Electric Breast Pumps, Double Pumping Kits, and related accessories, and provide details on your company's capacity to support a contract of this size and scope.
- Describe any changes that your company will need to implement in order to meet the state's requirements if awarded the Contract, to include expansion of manufacturing/warehousing capacity and hiring of additional personnel.

- If proposing subcontractors as part of your response, please describe the scope and percentage of work that will be performed by subcontractors in fulfillment of this multi-state Contract. Describe your relationship with the proposed subcontractors, i.e., strength and length of the relationship and contingencies to maintain uninterrupted service should the relationship fail.

6.2.7 CONTRACT IMPLEMENTATION PLAN

No form is provided for this Submittal. Bidder must fully describe a proposed implementation and contract transition plan to include: product training; staffing; product distribution; timelines; and dates relative to tentative contract startup. Length of Contract Implementation Plan Submittal must be no longer than **one (1) page**.

6.2.8 CUSTOMER SERVICE

No form is provided for this Submittal. Length of Customer Service Submittal must be no longer than **one (1) page**. Bidder must provide a detailed description of their customer service strategy to support this Contract, to include:

- Description of telephone support (to include a toll free number)
- Hours of availability
- Types of services available
- Number of inside/outside sales reps per each WSCA state that will support the contract
- Number of employees who will be dedicated to the service of this contract to ensure that each WSCA state's needs are met
- Standard response time for customer inquiries

6.2.9 VALUE-ADDED SERVICE PROPOSAL

No form is provided for this Submittal. Length of Value-Added Service Proposal must be no longer than **one (1) page**. Bidder must describe any services that may add more value to this acquisition such as reconditioned product offerings or trade-in programs. If offering additional services/products, please be specific with regards to pricing, warranty options, or program details.

6.2.10 REFERENCES SUBMITTAL

No form is provided for this Submittal. Bidder must provide a minimum of **five (5)** references with their Bid Submittal. Reference information should include company, address, phone number, and point of contact. Do not use Participating State Entities as references for this Solicitation.

NOTE: The five customer references are for evaluation purposes. Washington law allows the State to demand additional references and other information as part of a responsibility analysis during or after Bid evaluation. If the State determines that

additional references are needed, the Bidder must return them within ten (10) days of the State's request or face disqualification (the State reserves the right to extend the time).

6.2.11 TECHNICAL SPECIFICATIONS AND REQUIREMENTS

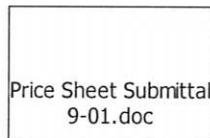
Bidders must print and return the completed Technical Specification and any additional documents or materials described within the Technical Specification. The corresponding Technical Specification Submittal form is provided as an embedded file immediately below.



6.2.12 PRICE SHEET SUBMITTAL

Also refer to Section 5 Pricing (Cost Factors) above for other pricing considerations.

Bidders must print, complete, and return the completed Price Sheet as part of their Bid Submittal. The Bidder should also complete any prompt payment and credit card acceptance information in the space provided on the Price Sheet Submittal.



Scoring: To determine the lowest price evaluation cost, the Procurement Coordinator will apply any preferences or penalties to the Bidder's Price Sheet Submittal. The Procurement Coordinator will use the revised total to determine the lowest evaluated pricing and corresponding score for pricing submitted in Section One of the Price Sheet Submittal. Pricing submitted in *Section Two Optional Pricing Submittal* will not be used as part of the cost evaluation. The Bidder with the lowest total evaluation price will receive 65 points. Those Bids with a higher evaluation price will receive a proportionately fewer number of evaluation points based upon the lowest Bid, using the following formula:

- Lowest total Bid evaluation cost divided by a higher total Bid evaluation cost (Bid that is being evaluated) multiplied by number of available points equals the cost factor evaluation points. Points will be rounded to three places to the right of the decimal point using standard rounding method.
- Sample Calculation using Bidder A = \$100,000 and Bidder B = \$110,000

- $\$100,000 / \$110,000 = 0.909 \times 65$ (max points available) = 59.091 (rounded to three places to the right of the decimal point using standard rounding).
- Bidder A is the lowest total Bid evaluation cost, so it would be assigned the 65 points. Bidder B would be assigned 59.091 points based on the formula above.

6.2.13 MATRIX SUMMARY

<ul style="list-style-type: none"> Complete and return each Submittal <u>in its entirety</u> and any other information, document or form required by and as instructed by the Submittal. When a signature line is provided, sign/date in ink (preferably in blue ink). <u>Your Bid to the State</u>: Provide a COMPLETED and SIGNED hard copy and an identical scanned electronic Adobe PDF copy of the COMPLETED and SIGNED hard copy on CD. 			
NAME OF SUBMITTAL	Page Limit	Form Provided OR Self Authored	CHECKLIST
Solicitation (S) (provide full copy): <i>Also Sign / Date</i> <ul style="list-style-type: none"> <u>Bidder's Authorized Offer</u> – located at the end of the solicitation document 	n/a	Form Provided	
Amendment(s): <i>Complete Information as instructed and sign/date (If applicable)</i>	n/a	Form Provided	
Model Contract (provide full copy): <ul style="list-style-type: none"> <u>Signatures – Sec. 12.7</u> 	n/a	Form Provided	
<u>Bidder Profile</u>	n/a	Form Provided	
<u>Dealer Authorization</u>	n/a	Self Authored	
<u>Company Experience/Capacity</u>	2 Pages	Self Authored	
<u>Contract Implementation Plan</u>	1 Page	Self Authored	
<u>Customer Service</u>	1 Page	Self Authored	
<u>Value-Added Service Proposal</u>	1 Page	Self Authored	
References: Five (5) References required	n/a	Self Authored	
<u>Technical Specifications and Requirements:</u>	n/a	Form Provided	
<u>Price Sheet Submittal:</u> All Bidders must complete Section One. Completion of Section Two is optional.	n/a	Form Provided	

6.3 PASS/FAIL SUBMITTALS EVALUATION

The State will perform the pass/fail Submittal evaluation. If a Pass/Fail Submittal is determined to be a Fail, the Bid is disqualified.

All Submittals, whether they are scored using points, price sheets or non-point pass/fail scored, have a pass/fail component. The State seeks competition to the fullest extent *reasonable* and reserves the right and has the discretion to avoid non-material rejection if it is practical; however, rejection avoidance efforts are not required.

The failure by the Bidder to provide required Submittal(s) may cause your Bid to be rejected as non-responsive or non-responsible. Failure to meet the material requirements of the Submittal may cause your Bid to be rejected for lack of responsibility. It is important that you submit all Submittals in the form requested and complete the Submittals as instructed by the Solicitation or Amendment.

6.4 NON-COSTS SUBMITTALS (POINT SCORED) EVALUATION

The State may assemble and preside over an evaluation committee. The evaluation committee will be responsible for reviewing and scoring applicable non-cost Submittals. If identified in the Allocation of Points below, some Submittals may have a minimum point threshold. Failure to achieve the minimum points in any non-cost Submittal as stated will lead to a Bid rejection.

If deemed necessary by the State, committee members may be substituted and/or the evaluation committee may be disbanded and reconstituted.

In addition to presiding over the evaluation committee, the State may review the non-cost Submittals, provide input, assemble evaluation aids, or perform other functions helpful to the evaluation committee. The committee may engage in a free flow of discussion with other committee members and the Administrator prior to, during, and after the evaluation.

The scoring of Submittals may be performed in isolation, together as a group, or a combination of both. Each committee member will give a particular Submittal a score. All of the committee members' scores for that Submittal will be added together and then divided by the number of members to arrive at a total score for the Submittal. If a minimum total score is required but is not achieved, the Bid is disqualified. This process will repeat for the other point scored non-cost Submittals.

When all Submittals have been scored, these scores will be added together to form a total score for all of the non-costs Submittals.

6.5 ALLOCATION OF POINTS

The Non-Cost Submittals will be totaled to arrive at a total score in conformity with Section 6.4 above. This non-cost Submittal score will be added to the price sheet score to form an evaluation total score. The relative importance for each section is as follows:

SUBMITTAL NAME Subject to WAC 236-48-071	SCORING:	Bidder 1	Bidder 2	Bidder 3
PASS / FAIL SUBMITTALS:				
Solicitation (full copy): <i>Also Sign / Date</i> <i>Bidder's Authorized Offer</i>	Pass / Fail			
Amendments (if any): Refer to and comply with any additional instructions as required in the amendment.	Pass / Fail			
Model Contract (full copy): <i>Also Complete</i> <i>Signature Page – Sec. 12.7</i>	Pass / Fail			
Bidder Profile	Required Prior to Award			
Dealer Authorization	Pass/Fail			
References	Pass/Fail			
Technical Specifications: <i>Did the Bidder fulfill all the requirements of the Technical Specification</i>	Pass / Fail			
Bidder moves forward? Yes or No				
NON-COST SUBMITTALS (Point Scored)				
Company Experience	10 max			
Customer Service	10 max			
Contract Implementation	5 max			
Value- Added Service Proposal	10 max			
Non-Cost Points Total:	35 max			
PRICE SHEET SCORED SUBMITTAL				
Price Sheet Total: (determined by formula)	65 max			
Points Scored Non-Cost Total:	35 max			
EVALUATION TOTAL:	100 max			

6.6 EQUIPMENT/PRODUCT DEMONSTRATION

Other sections of the solicitation may already require a scheduled equipment or product demonstration as part of your Bid response to the State. Failure on the part of the Bidder to provide the equipment/product demonstration may cause your Bid to be rejected for lack of responsiveness. Where the solicitation does not require a scheduled equipment/product demonstration as part of your Bid, the State reserves the right to require the demonstration prior to award or after award, all at the Bidder's expense. Failure to provide requested demonstration within ten (10) business days after request can result in Bid rejection or contract termination.

Demonstration(s) are conducted within Thurston County, Washington unless another Washington location is declared by the State. The Bidder is responsible for any costs associated with the demonstration(s) and will NOT be reimbursed.

The Bidder(s) will coordinate with the State to establish the location, date and time of the performance demonstration(s).

In the event the equipment demonstrated does not meet performance and/or capability requirements, the Bidder may be rejected as non-responsive/non-responsible.

6.7 SAMPLES

As part of the evaluation process, Bidders may be required to submit samples of the following items listed in Section 6.2.13 Technical Specifications and Requirements.

All samples provided shall be identical to products quoted by Bidder and shall be labeled with Bidder's name, stock number, Bid number, Bid line item number. All samples are an express warranty, which shall also apply to all products provided under this Contract. Bidders failing to comply with this requirement risk Bid rejection or Contract termination.

Failure on the part of the Bidder to provide a required sample may cause your Bid to be rejected for lack of responsiveness. Where the solicitation does not require samples as part of your Bid, the State reserves the right to require samples prior to award or after award, all at the Bidder's expense. Failure to provide requested samples within ten (10) business days after request can result in Bid rejection or Contract termination.

If not destroyed in testing or required for quality control, the Bidders may request return of samples at their expense. The Bidder must provide desired method of returning and exact postage or a call tag for samples to be returned. Each sample must be labeled with return address. If Bidder does not request return within thirty (30) calendar days of contract award, samples will be considered property of the state.

6.8 DESCRIPTIVE LITERATURE AND WARRANTY

Other sections of the solicitation may already require descriptive literature and warranty information as part of your Bid response to the State. Failure on the part of

the Bidder to provide the required documents may cause your Bid to be rejected for lack of responsiveness. Where the solicitation does not require descriptive literature and warranty information as part of your Bid, the State reserves the right to require these documents prior to award or after award, all at the Bidder's expense. Failure to provide requested documents within ten (10) business days after request can result in Bid rejection or Contract termination.

Descriptive literature may include but is not limited to catalogs, latest dated published manufacturer's price list, cut sheets, or other literature with the Bid. Descriptive literature shall clearly describe the Bid product's quality, function, and performance. Failure to do so may cause your Bid to be rejected or contract terminated.

Warranty will cover items delivered under this Contract. Unless otherwise specified in this Solicitation, the default product warranty period will be for a minimum period of one year after acceptance of materials by the purchaser. All materials provided shall be new, unused, of the latest model or design and of recent manufacture. Any qualified Contract Purchaser may avail itself of the Bidder's standard warranty if deemed more beneficial to the Purchaser.

In the event of conflict between Contract Terms and Conditions and the Bidder's literature or warranty, the Contract Terms and Conditions shall prevail. Award of the Bid by the State, which includes conflicting literature or warranties, is neither a waiver nor an acceptance of the conflicting literature or warranties by OSP, whether known or unknown.

6.9 SELECTION OF APPARENT SUCCESSFUL BIDDER(S)

The responsive, responsible Bidder with the highest point total will be declared the Apparent Successful Bidder for the State of Washington. Acting as the Agent for WSCA, the State reserves the right to award Contracts to a ranked pool of Bidders for use by WSCA Participating Entities, in conformity with their applicable state laws. See Section 6.12 below for award methodology.

To aid in the Bid evaluation process, after Bid due date and time, the State may require individual Bidders to appear at a date, time and place determined by the State for the purpose of conducting discussions to determine whether both parties have a full and complete understanding of the nature and scope of contractual requirements. In no manner shall such action be construed as negotiations or an indication of the State's intention to award.

6.10 NOTIFICATION OF APPARENTLY SUCCESSFUL BIDDER

All Bidders responding to this Solicitation will be notified through an Intent to Award when the State has determined the Apparent Successful Bidder(s). The date of announcement of the Apparent Successful Bidder(s) will be the date of the notification from the State. As a Bidder's Bid is a firm offer for the State's review and acceptance, no further negotiation is required to complete the award. However, the State *may* at this time enter into Contract negotiations with the Apparent Successful Bidder(s) to complete the award.

Designation as an Apparent Successful Bidder does not imply that the State will issue an award to your firm. It merely suggests that at this moment in time the State believes your bid to be responsive. This designation allows the State to perform a responsibility analysis and ask for additional documentation. The State is also at liberty to re-review and determine whether the bid is truly responsive as initially believed. The Bidder must not construe this as a notification of award, impending award, an attempt to negotiate, etc. If you act or fail to act in reliance of this notification, you do so at your own risk and expense.

6.11 AWARD CRITERIA

Contract award(s) shall be offered to the responsive and responsible Bidder(s) with the highest evaluation score(s), based on the criteria established in this Solicitation and subject to all factors identified in RCW 43.19.1911.

An award is only a *conditional award* until it is clear that any follow-on protest or litigation does not reveal an evaluation or award error on the part of OSP. Further, an award may be cancelled for other reasons as stated in RCW 43.19.1911. The awarded Contractor(s) shall hold the State harmless should the award be cancelled.

Acting as the Agent for WSCA through Interlocal Agreement under RCW 39.34, the State intends to establish a pool of ranked Bidders to provide Breast Pumps and Related Accessories to Participating Entities, using the following methodology:

- (1) The State shall offer a Contract Award to the responsive, responsible Bidders with the two highest evaluation scores. If other Bidders' evaluation scores fall within 20% of the highest evaluation score, the State of Washington will consider, at its sole discretion, whether it is in the best interest of Participating Entities to also award Contracts to those Bidders.

Participating Entities may choose to enter into a Contract(s) with any or all of the awarded ranked pool of Bidders through the execution of a Participating Addendum, in conformity with their respective state laws. Contract award does not guarantee any minimum purchase volume.

- (2) As required by RCW 43.19, State of Washington Cooperative Members will only utilize the Contract for new equipment and supplies with the responsive, responsible Bidder receiving the highest evaluation score, after all preferences and penalties have been applied. The State of Washington reserves the right to enter into a Contract with any of the ranked pool of Bidders for the maintenance of existing equipment in use at WIC offices statewide

The State reserves the right to award by line item, group, aggregate, or all-or-nothing. Should the Bidder be awarded a contract, the Bidder understands and agrees that this shall not be seen as the State's acceptance of the Bidder's conflicting documentation, term, or conditions, nor is it a waiver of the State's terms and conditions in favor of the Bidder. The Bidder understands and agrees that the State's terms and conditions shall prevail and be enforced.

BIDDER'S AUTHORIZED OFFER
(BID SIGNATURE PAGE)
WIC Breast Pumps and Related Accessories # 01910
Issued by the State of Washington

Certifications and Assurances

We make the following certifications and assurances as a required element of the Response, to which it is attached, affirming the truthfulness of the facts declared here and acknowledging that the continuing compliance with these statements and all requirements of the IFB are conditions precedent to the award or continuation of the resulting Contract.

1. The prices in this Response have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered. The prices in this Response have not been and will not be knowingly disclosed by the offeror, directly or indirectly, to any other offeror or competitor before Contract award unless otherwise required by law. No attempt has been made or will be made by the offeror to induce any other concern to submit or not to submit an offer for the purpose of restricting competition. However, we may freely join with other persons or organizations for the purpose of presenting a single Bid or Proposal.
2. The attached Response is a firm offer for a period of **90** days following the Response Due Date specified in the IFB, and it may be accepted by the State without further negotiation (except where obviously required by lack of certainty in key terms) at any time within the **90** day period. In the case of protest, our Response will remain valid for **120** days or until the protest and any related court action is resolved, whichever is later.
3. In preparing this Response, we have not been assisted by any current or former employee of the state of Washington whose duties relate (or did relate) to the State's solicitation, or prospective Contract, and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of this Response. (Any exceptions to these assurances are described in full detail on a separate page and attached to this document.)
4. We understand that the State will not reimburse us for any costs incurred in the preparation of this Response. All Responses become the property of the State, and we claim no proprietary right to the ideas, writings, items or samples unless so stated in the Response. Submission of the attached Response constitutes an acceptance of the evaluation criteria and an agreement to abide by the procedures and all other administrative requirements described in the solicitation document.

5. We understand that any Contract awarded, as a result of this Response will incorporate all the solicitation requirements. Submission of a Response and execution of this Certifications and Assurances document certify our willingness to comply with the Contract terms and conditions appearing in Appendix B- The Model Contract, if selected as a contractor. It is further understood that our standard contract will not be considered as a replacement for the terms and conditions appearing in Appendix B- The Model Contract of this solicitation.
6. Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

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7. The authorized signatory below acknowledges having read and understood the entire solicitation and agrees to comply with the terms and conditions of the solicitation in submitting and fulfilling the offer made in its Bid.
8. By submitting this Bid, Bidder hereby offers to furnish materials, supplies, services and/or equipment in compliance with all terms, conditions, and specifications contained in this solicitation.

The signatory below represents that he/she has the authority to bind the company named below to the Bid submitted and any contract awarded as a result of this solicitation.

Bidder Signature

Company Name

Title

Date

APPENDIX A PROTEST PROCEDURE

PROTEST PRIOR TO AWARD:

PROTEST PRIOR TO AWARD CRITERIA:

Protests prior to Award will be considered only if the protest concerns:

1. the bid of another Bidder,
2. the specifications or
3. the manner in which the solicitation process has been conducted.

INITIATING THE PROTEST PROCESS:

The protesting Bidder must notify the State Procurement Coordinator in charge of the solicitation of his/her intent to file a protest as soon as possible after he/she becomes aware of the reason(s) for the protest. The protest(s) must be received in writing by the State Procurement Coordinator not later than five (5) business days after the Bidder's notification to the State Procurement Coordinator of the intent to protest.

If an Intent to Award is announced, any protest must be received in writing by the State Procurement Coordinator not later than five (5) business days after the announcement or as otherwise specified in the Solicitation document.

If a protest is not received within these time frames it will be untimely and the State Procurement Coordinator may proceed with the award without further obligation.

The Procurement Coordinator will consider all the facts available and issue a decision in writing within ten (10) business days after receipt of the protest, unless more time is needed.

If additional time is necessary the State Procurement Coordinator will notify the protesting Bidder and, where applicable, the Bidder(s) against whom the protest is made.

APPEAL OF PROTEST PRIOR TO AWARD DECISION:

The protesting Bidder or the Bidder against whom the protest is made has the right to appeal the decision of the State Procurement Coordinator to the GA Assistant Director in charge of the Office of State Procurement.

The appeal must be received by the GA Assistant Director within five (5) business days after notification of the State Procurement Coordinator's decision.

The GA Assistant Director will consider all of the facts available and issue a decision in writing within ten (10) business days after receipt of the appeal, unless more time is

needed. The appealing Bidder will be notified if additional time is necessary.

Award of the contract will be postponed until after the GA Assistant Director has issued a decision unless an emergency exists necessitating the award of the contract as determined by the GA Assistant Director.

The decision of the GA Assistant Director on the protest appeal is final. The GA Assistant Director may issue further clarifications if determined necessary.

PROTEST AFTER AWARD:

PROTEST AFTER AWARD CRITERIA:

Protests after Award will be considered only if the protest concerns:

1. A matter which arises after the Award or
2. Could not reasonably have been known or discovered prior to Award.

INITIATING THE PROTEST PROCESS AFTER AWARD:

The protesting Bidder must notify both the State Procurement Coordinator in charge of the solicitation process and the Bidder that has received the Award that a protest of the Award is being made. This notification must be made as soon as possible after the Notice of Award is issued by an immediate communication method such as telephone or e-mail. The protesting Bidder must provide documentation demonstrating that they have notified the Bidder that has received the Award of their protest.

In addition to the above notification requirement, the written protest must be received by the GA Assistant Director in charge of the Office of State Procurement not later than five (5) business days after Notice of Award is issued by the Office of State Procurement.

The GA Assistant Director will:

Issue a decision on the protest within ten (10) business days after the protest was received, unless more time is needed.

The protesting Bidder and the Bidder who has received the Award shall be notified of any delay in issuing the GA Assistant Director's decision if more time is needed.

The decision of the GA Assistant Director is final if the award is upheld. The GA Assistant Director may subsequently issue further clarifications, if necessary.

If the GA Assistant Director finds that the protest should be upheld and the Award

canceled, all Bidders, including the protesting Bidder and the Bidder who received the Award, will be notified of the intent to cancel the Award and the reasons therefore.

AWARDED BIDDER APPEAL PROCESS

The Bidder who has received the Award has five (5) business days after receipt of notification of the intent to cancel the award in which to appeal the decision to the Director of General Administration. Copies of the Bidder's appeal must also be sent to the GA Assistant Director and the State Procurement Coordinator responsible for the solicitation.

The Director of General Administration or designee will:

Issue a decision

- a. to both the appealing Bidder and the original protesting Bidder
- b. within ten (10) business days after receipt of the appeal, unless more time is needed
 - i. If more time is needed to issue a decision, all Bidders, including the appealing Bidder and the original protesting Bidder, will be notified.

DECISION FINAL

The appeal decision of the Director of General Administration is final. The Director of General Administration may subsequently issue further clarifications if necessary,

APPEAL UPHeld AND CONTRACT AWARD UPHeld

If the Director of General Administration upholds the appeal and upholds the contract as awarded, the State Procurement Coordinator will notify all Bidders of the decision.

APPEAL DENIED AND AWARD CANCELED

If the Director of General Administration upholds the decision of the GA Assistant Director the Office of State Procurement will proceed with cancellation of the award.

If the award is cancelled, the Assistant director of GA may reject all bids, quotes or proposals pursuant to RCW 43.1911(4) and solicit new bids, quotes or proposals.

If the Assistant director of GA does not decide to reject all bids, an award will be made to the next lowest responsive and responsible Bidder.

PROTEST AND APPEALS – FORM AND SUBSTANCE

All protests and appeals must:

1. be in writing,
2. signed by the protesting or appealing Bidder or an authorized agent
3. delivered within the time frame(s) outlined herein
4. addressed to that individual within the Office of State Procurement or General Administration assigned review responsibilities as specified above

The protesting or appealing Bidder must:

1. state all facts and arguments on which the protesting or appealing Bidder is relying as the basis for its action
2. attach any relevant exhibits related, or referred to in the written protest or appeal
3. mail, fax or deliver copies of all protests, appeals, and exhibits to the Bidder or Bidders against whom the protest is made at the same time such protest, appeal, and exhibits are submitted to the Office of State Procurement or General Administration.

COMMUNICATION DURING PROTESTS AND APPEALS

All communications relative to a solicitation that is being protested or appealed must be coordinated through that person conducting the official review for the Office of State Procurement or General Administration.

Appendix B

THE MODEL CONTRACT

State of Washington
Department of General Administration
Office of State Procurement (OSP)



Contract # 01910
For Purchases of Breast Pumps and Related Accessories
Under the Authority of
Chapter 43.19 RCW

1 OVERVIEW

1.1 CONTRACT SCOPE

The purpose of this Contract is to facilitate the as-needed purchase of Manual and Electric Breast Pumps, Double Pumping Kits, and related accessories for participating members of the Western States Contracting Alliance (WSCA). The balance of the 50 states, the District of Columbia, US Territories and other public entities may also use WSCA contracts.

Specific to the State of Washington, all Washington Purchasing Cooperative members are eligible to use this Contract. See Section 1.4 *Participating Entities* for more specific information regarding eligibility requirements for Contract utilization.

This Contract was bid under the statutory authority of RCW 43.19 for the purchase of goods and services as stated herein.

1.2 CONTRACT SCOPE AND MODIFICATIONS

The State reserves the right to modify this Contract by mutual agreement between the State and the Contractor, so long as such modification is substantially within the scope of the original Contract. The state reserves the right to add products as the market conditions and Purchasers' needs change. Such modifications will be evidenced by issuance of a written authorized amendment by the Contract Administrator.

1.3 RECITALS

The state of Washington, acting by and through the Department of General Administration (GA), Office of State Procurement (OSP) issued an Invitation for Bid (IFB) for the purpose of purchasing goods and services in accordance with its authority under Chapter 43.19 RCW.

The Awarded Contractor submitted a timely Response to OSP's SOLICITATION # 01910.

OSP evaluated all properly submitted Responses to the above-referenced SOLICITATION and has identified *the Awarded Contractor* as the apparently successful Contractor.

OSP has determined that entering into a Contract with *Awarded Contractor* will meet Purchaser's needs and will be in Purchaser's best interest.

NOW THEREFORE, OSP awards to *the Awarded Contractor* this Contract, the terms and conditions of which shall govern Contractor's furnishing to Purchasers the goods and services as described herein. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

1.4 PARTICIPATING ENTITIES

Potential Participating Entities include members of the Western States Contracting Alliance. The Western States Contracting Alliance (WSCA) is a cooperative group-contracting consortium for state government departments, institutions, institutions of higher education, agencies and political subdivisions (e.g., school districts, counties, cities, etc.,) for the States of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming. WSCA is a cooperative purchasing arm of the National Association of State Procurement Officials (NASPO). The balance of the 50 states, the District of Columbia, US Territories and other public entities may also use WSCA contracts.

In addition to the State of Washington, the following entities have signified their intent to participate in this contract: Alaska; Arizona; California; Commonwealth of the Northern Mariana Islands; District of Columbia; Guam; Hawaii; Idaho; Inter-Tribal Council of Arizona; Kansas; Louisiana; Missouri; Nebraska; Nevada; New Jersey; New Mexico; Oregon; South Dakota; Utah; Vermont; Wisconsin; and Wyoming.

This Intent to Participate is not binding. Other states and public entities may use awards based on this solicitation at any time during the contract period.

All members of the Washington State Purchasing Cooperative (WSPC) including where applicable: State Agencies, Institutions of Higher Education, Political Subdivisions, and Non-Profit Corporations are eligible to use this Contract. Upon execution of a Participating Addendum with the State of Oregon, Department of Administrative Services, this Contract will also be available for use by Oregon's Department of Administrative Services Cooperative Purchasing Program (ORCPP).

While use of the Contract by Political Subdivisions and Non-Profit Corporations that are members of the WSPC is optional, the Office of State Procurement encourages them to use state contracts. Their use of the contracts may significantly increase the purchase volume. Their orders are subject to the same contract terms, conditions and pricing as state agencies. The Office of State Procurement accepts no responsibility for orders or payment by WSPC members.

A list of WSPC members is available at <http://www.ga.wa.gov/PCA/SPC.htm>.

A list of current authorized ORCPP members is available at:

<http://www.oregon.gov/DAS/PFSS/SPO/docs/orcpp-member-list.pdf> or

<http://www.oregon.gov/DAS/PFSS/SPO/docs/orcpp-member-list.xls>

Purchases by Nonprofit Corporations

Legislation allows nonprofit corporations to participate in State Contracts for purchases administered by the Office of State Procurement (OSP). By mutual agreement with OSP, the contractor may sell goods or services at contract pricing awarded under this SOLICITATION and resulting contract to self certified nonprofit corporations. Such organizations purchasing under the State Contract shall do so only to the extent they retain eligibility and comply with other contract and statutory provisions. The contractor may make reasonable inquiry of credit worthiness prior to accepting orders or delivering goods or services on contract. The State accepts no responsibility for payments by nonprofit corporations. Their use of the contracts may significantly increase the purchase volume. Their orders are subject to the same contract terms, conditions and pricing as state agencies.

1.5 ESTIMATED USAGE

Based on past and/or projected usage, it is estimated that purchases over the initial two (2) year term of the Contract will approximate **\$ 15,000,000**. This estimate is provided solely for the purpose of assisting Bidders in preparing their Response. Orders will be placed only on an as needed basis. **The State of Washington does not represent or guarantee any minimum purchase.**

1.6 CONTRACT TERM

The initial term of this contract is two (2) years from date of award with the option to extend for additional term one (1) year terms or portions thereof. Extension for each additional term shall be offered at the sole discretion of the OSP and are subject to written notice to Contractor(s). The total contract term, including the initial term and all subsequent extensions, shall not exceed six (6) years, unless an emergency exists and/or special circumstances require a partial term extension. The state reserves the right to extend with all or some of the contractors, solely determined by the state.

1.7 BEST BUY PROGRAM (DIRECT PURCHASES)

This section is for informational purposes only and is not a Contract term. Contracts based under the authority of RCW 43.19.1906 and 1911 notwithstanding, Washington law allows authorized Agencies to purchase off-contract "PROVIDED, That any agency may purchase material, supplies, services, and equipment for which the agency has notified the purchasing and material control director that it is more cost-effective for the agency to make the purchase directly from the vendor." Authority: See RCW 43.19.190 (2), second Proviso. The concept is identified in the Washington Purchasing Manual (WPM) as the Best Buy Program. The WPM is a policy giving direction to Purchasers and may be changed at anytime and with no notice. At a glance (abridged):

- Contractor provided the opportunity to meet the non-contract supplier's offer.

- Agency must consider all cost factors, such as, warranty, shipping, quality, trade-in, cancellation, delivery, installation, and prompt payment/volume discounts.
- Acceptance by the non-contract supplier of all other terms, conditions, and requirements of the state contract.
- Agencies must notify General Administration at the time of purchase when making a cost effective direct purchase. To meet the notification requirements of RCW 43.19.1905(g) use the on line Best Buy Calculator and Reporter.

2 CONTRACT ADMINISTRATION

2.1 OSP CONTRACT ADMINISTRATOR

The OSP shall appoint a single point of contact that will be the Contract Administrator for this Contract and will provide oversight of the activities conducted hereunder. The Contract Administrator will be the principal contact for Contractor concerning business activities under this Contract.

2.2 ADMINISTRATION OF CONTRACT

OSP will maintain Contract information and pricing and make it available on the Department of General Administration web site. The Contract prices are the maximum price Contractor can charge. After coordination with OSP, the Contractor may also offer volume and voluntary discounts to Purchasers in any amount, period of time, and for any set of products or services of the Contractor's choosing.

A Contractor may propose a revision to its offerings to reflect changed products appropriate to the scope of the Contract, and may propose such new products with associated prices to the OSP Contract Administrator for approval. The Contract Administrator has sole discretion to approve additions of revised offerings and pricing. New or changed products proposed by Contractor must meet the requirements established in this solicitation document or subsequent revisions. If approved by OSP, the new products or services will be added to the Contract by written amendment.

For the initial 365 days of the Contract term, pricing for all products will be no greater than the prices quoted in the Bidder's Response. If, however, during any term of the Contract lower prices and rates become effective for like quantities of products under similar terms and conditions, through a reduction in Manufacturer's list prices, promotional discounts, or other circumstances, Purchasers must be given immediate benefit of such lower prices and rates.

2.3 CONTRACTOR SUPERVISION AND COORDINATION

Contractor shall:

1. Competently and efficiently, supervise and coordinate the implementation and completion of all Contract requirements specified herein;
2. Identify the Contractor's Representative, who will be the principal point of contact for the OSP Contract Administrator concerning Contractor's performance under this Contract.
3. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's Representative assigned to this Contract; and
4. Be bound by all written communications given to or received from the Contractor's Representative.

Violation of any provision of this paragraph may be considered a material breach establishing grounds for Contract termination.

2.4 POST AWARD CONFERENCE

The contractor may be required to attend a post award conference scheduled by the Procurement Coordinator to discuss contract performance requirements. The time and place of this conference will be scheduled following contract award.

2.5 CONTRACT MANAGEMENT

Upon award of this contract, the contractor shall:

1. Review the impact of the award and take the necessary steps to ensure that contractual obligations will be fulfilled.
2. Promote and market the use of this contract to all authorized contract Purchasers.
3. Ensure that those who endeavor to utilize this contract are authorized Purchasers under this Contract.
4. At no additional charge, assist Purchasers in the following manner to make the most cost effective, value based, purchases including, but not limited to:
 - a) Visiting the Purchaser site and providing Purchaser with materials/supplies/equipment recommendations.
 - b) Providing Purchasers with a detailed list of contract items including current contract pricing and part numbers.
5. The contractor shall designate a customer service representative who will be responsible for addressing Purchaser issues including, but not limited to:
 - a) Logging requests for service, ensuring repairs are completed in a timely manner, dispatching service technicians, and processing warranty claim documentation.
 - b) Providing Purchasers with regular and timely status updates in the event of an order or repair fulfillment delay.
6. Acting as the lead and liaison between the manufacturer and Purchaser in resolving warranty claims for contract items purchased.

2.6 UNITED NATIONS GLOBAL COMPACT STANDARDS

The Contractor agrees to adhere to the Ten Principles of the United Nations Global Compact standards. These standards protect human rights and the environment, promote fair labor practices, and guard against corruption.

2.7 CHANGES

Alterations to any of the terms, conditions, or requirements of this Contract shall only be effective upon written issuance of a mutually agreed Contract Amendment by the Contract Administrator. However, changes to point of contact information may be updated without the issuance of a mutually agreed Contract Amendment.

To accommodate Purchaser requirements and manufacturer discontinuations, Contractor may propose a revision to its offerings which reflects product changes appropriate to the scope of the Contract to the Contract Administrator for approval. Proposed pricing shall remain consistent with Bid pricing. Contract Administrator has the sole discretion in approval of revised offerings and pricing. New products proposed by Contractor must meet the requirements established in this Solicitation document or subsequent revisions. Upon OSP approval, product additions will be implemented by written amendment.

Purchasers may request pricing for products not included in the award. Contractor may submit a proposal for satisfaction of the request to the Contract Administrator for consideration. If the Contractor is unable to provide a reasonable solution, the Contractor will notify the Purchaser. If the Contract Administrator concludes the pricing offered is in the best interest of the state, considering the cost of alternatives, he/she will by written notification accept the offer of solution and record it in the file.

2.8 CONTRACT ADMINISTRATION FEE

The Contract(s) will be subject to a WSCA Administration Fee. Contractor(s) will include this fee in its Bid pricing and not as a separate line item to Purchasers. The Contractor(s) will collect the fees and distribute the fees to WSCA.

The WSCA Administration Fee will be one half of one percent (0.5%) on all purchases made under authority of the Contract. Purchases are defined as total invoice price less sales tax. No taxes will be assessed against the WSCA Administration Fee.

The WSCA Administrative fee shall be paid within thirty (30) days after the end of the calendar quarter. Contractor shall indicate the Contract Number #01910 and include with the remittance, a quarterly sales report by WSCA contract participant. The administrative fee shall be paid to:

WSCA/NASPO
NASPO PROGRAM MANAGER
201 EAST MAIN STREET, SUITE 1450
LEXINGTON, KY 40507

In addition to the WSCA Administration Fee as stated above, some Participating Entities may also require an administrative fee, and will be incorporated into the Participating Entity's Participating Addendum. Participating Entity Administrative Fees may be added to the price of each item.

2.9 STATEWIDE VENDOR PAYMENT REGISTRATION

Contractors are required to be registered in the Statewide Vendor Payment system, prior to submitting a request for payment under this Contract. Purchasers who are Washington state agencies require registration to be completed prior to payment.

The Washington State Office of Financial Management (OFM) maintains a central contractor registration file for Washington State agencies to process contractor payments.

To obtain registration materials go to <http://www.ofm.wa.gov/accounting/vendors.asp> the form has two parts; Part 1 is the information required to meet the above registration condition. Part 2 allows the state to pay invoices electronically with direct deposit and is the state's most efficient method of payment and you are encouraged to sign up for this form of payment.

2.10 SALES & SUBCONTRACTOR REPORTS

The Contractor shall provide a Sales and Subcontractor Report to the Office of State Procurement on a quarterly basis in the electronic format provided by the Office of State Procurement at: <https://fortress.wa.gov/ga/apps/CSR/Login.aspx>.

Reports must be submitted electronically within thirty (30) days after the end of the calendar quarter, i.e., no later than April 30th, July 31st, October 31st and January 31st.

2.10 OTHER REQUIRED REPORTS

All reports required under this Contract must be delivered to the Contract Administrator. Contractor may be required to provide a detailed annual contract sales history report that may include but is not limited to products description, part number, per unit quantities sold, contract price in an electronic format that can be read by MS Excel. Other required reports will be designed and approved by the parties by mutual agreement.

2.11 WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS)

Contractor shall be registered in the Contractor registration system, Washington's Electronic Business Solution (WEBS) www.ga.wa.gov/webs, maintained by the Washington State Department of General Administration. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with WEBS and maintain an accurate Contractor profile in WEBS.

3 PRICING

3.1 PRICE PROTECTION

Contractor agrees all the Prices, terms, warranties, and benefits provided in this Contract are comparable to or better than the terms presently being offered by Contractor to any other governmental entity purchasing the same quantity under similar terms. If during the term of this Contract, the Contractor shall enter into contracts with any other governmental entity providing greater benefits or more favorable terms than those provided by this Contract, Contractor shall be obligated to provide the same to Purchaser for subsequent purchases and OSP shall be notified of changes in Contract pricing.

During any term of the Contract, if lower prices and rates become effective for like quantities of products under similar terms and conditions, through reduction in Manufacturer's or Contractor's list prices, promotional discounts, or other circumstances, Purchasers must be given immediate benefit of such lower prices and rates, and the state shall be notified of changes in Contract pricing.

The Contract prices are the maximum price Contractor can charge. The Contractor may also offer volume and promotional discounts to Purchasers.

3.2 NO ADDITIONAL CHARGES

Unless otherwise specified in the Solicitation, no additional charges by the Contractor will be allowed including, but not limited to: handling charges such as packing, wrapping, bags, containers, reels; or the processing fees associated with the use of credit cards. Notwithstanding the foregoing, in the event that market conditions, laws, regulations or other unforeseen factors dictate, at the Contract Administrators sole discretion, additional charges may be allowed.

3.3 PRICE ADJUSTMENTS

Unless modified by mutual agreement, Contractor requests for adjustments in pricing will be considered at the sole discretion of OSP. Pricing shall remain firm and fixed for the initial two (2) year term of the Contract. Thereafter, price adjustments will only be on a pass through basis and shall not produce a higher profit margin for the Contractor than that established by the original Contract pricing. Contractor shall not make extensions contingent on price adjustments.

Price increases will not be considered without supporting documentation sufficient to justify the requested increase. Documentation must be based on published indices such as the Producer Price Index or other acceptable indices, and/or the result of increases at the manufacturer's level, other supportable pricing increases, and incurred after Contract commencement date. Contractor shall provide a detailed breakdown of their costs upon request. A minimum of 120 calendar days advance written notice of price increase is required.

The granting of any price adjustment will be at the sole discretion of OSP. The Contractor shall be notified in writing by the Contract Administrator of any price adjustment granted by OSP, and such price adjustment shall be set forth in a written amendment to the Contract. Price adjustments granted by OSP shall remain unchanged for at least 365 calendar days thereafter, and no request for adjustments in price will be considered during that time period.

4 CONTRACTOR QUALIFICATIONS AND REQUIREMENTS

4.1 ESTABLISHED BUSINESS

Prior to commencing performance, or prior to that time if required by the OSP, law or regulation, Contractor must be an established business firm with all required licenses, fees, bonding, facilities, equipment and trained personnel necessary to meet all requirements and perform the work as specified in the Solicitation. Contractor shall maintain compliance with these requirements throughout the life of this contract.

The OSP reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

4.2 CONTRACTOR CERTIFICATIONS

Contractor must provide evidence as directed in the original solicitation, of its status as an authorized product reseller of all items listed in Bidder's Response to Solicitation 01910. If this reseller status is discontinued, this Contract may be terminated as set forth elsewhere herein. Contractor shall maintain its reseller status for the initial term and any renewals of the resulting Contract.

4.3 DEALER AUTHORIZATION

Throughout the contract life, the Contractor shall maintain authorization from the manufacturer consistent with the requirements outlined in the original Solicitation.

4.4 STAFF QUALIFICATIONS

If at Contract award or any time thereafter, any specifically named individual(s) identified in the Response to work on this engagement are not available, OSP has the right to approve or reject any change in Contractor's personnel. Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW.

4.5 USE OF SUBCONTRACTORS

In accordance with solicitation requirements, Contractor agrees to take complete responsibility for all actions of such Subcontractors as related to work performed within the scope of this Contract.

Prior to performance, Contractor shall identify all subcontractors who will perform services in fulfillment of contract requirements, including their name, the nature of services to be performed, address, telephone, facsimile, email, federal tax identification number (TIN), MWBE status, and anticipated dollar value of each subcontract:

OSP reserves the right to approve or reject any and all Subcontractors that are identified or used by the Contractor for performance under this Contract.

Specific restrictions apply to contracting with current or former state employees pursuant to Chapter 42.52 RCW.

4.6 SUBCONTRACTS AND ASSIGNMENT

Contractor shall not Subcontract, assign, or otherwise transfer its obligations under this Contract without the prior written consent of the Contract Administrator. Contractor shall provide a minimum of thirty (30) calendar days advance notification of intent to Subcontract, assign, or otherwise transfer its obligations under this Contract. Violation of this condition may be considered a material breach establishing grounds for Contract termination. The Contractor shall be responsible to ensure that all requirements of the Contract shall flow down to any and all Subcontractors. In no event shall the existence of a Subcontract operate to release or reduce the liability of Contractor to the state for any breach in the performance of the Contractor's duties.

4.7 CONTRACTOR AUTHORITY AND INFRINGEMENT

Contractor is authorized to sell under this Contract, only those materials, supplies, services and/or equipment as stated herein and allowed for by the provisions of this Contract. Contractor shall not represent to any Purchasers that they have the contract authority to sell any other materials, supplies, services and/or equipment. Further, Contractor may not intentionally infringe on other established State Contracts.

4.8 MATERIALS AND WORKMANSHIP

The Contractor shall be required to furnish all materials, supplies, equipment and/or services necessary to perform Contractual requirements. Materials, supplies and workmanship used in the construction of equipment for this Contract shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

4.9 MERCURY CONTENT AND PREFERENCE

Contractor shall provide mercury-free products when available. Should mercury-free products not exist, contractors shall provide products with the lowest mercury content available. Contractor shall disclose products that contain added mercury

and provide an explanation that includes the amount or concentration of mercury, and justification as to why added mercury is necessary for the function or performance of the product.

The Contractor is to provide any existing technical data pertaining to the addition of mercury or a mercury compound intentionally added to the product. If the product does not contain mercury or a mercury compound, Contractor shall submit a written statement to that effect. Contractor shall maintain compliance with these requirements throughout the life of this contract.

The OSP reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

5 DELIVERY REQUIREMENTS

5.1 ORDER FULFILLMENT REQUIREMENTS

Authorized Purchasers may place orders against this Contract either in person, electronically, facsimile or by phone. Once an order is issued, the following shall apply:

1. For purposes of price verification and auditing, upon receipt of a purchase order the contractor shall send the Purchaser an order confirmation that includes Contract pricing.
2. Upon the request of the Purchaser, the Contractor shall supply Purchaser with manufacturer's list pricing or other documentation needed to verify Contract pricing compliance.
3. Product damaged prior to acceptance will either be replaced or repaired in an expedited manner at contractor's expense. Alternatively, at the Purchaser's option, any possible damage to the product can be noted on the receiving report and the cost deducted from final payment.

The Contractor is responsible to verify delivery conditions/requirements with the Purchaser prior to the delivery.

5.2 STANDARD OF QUALITY/CONSISTENCY OVER TERM OF CONTRACT

If, in the sole judgment of the OSP or the Purchaser, any item is determined not to be an equal, the Purchaser may take any or all of the following actions:

1. The product may be returned at Contractor's expense
2. The purchase/field order may be terminated without any liability to the State of Washington or Purchaser

5.3 SHIPPING AND RISK OF LOSS

Contractor shall ship all Products purchased pursuant to this Contract, freight prepaid, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to Delivery Date, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Contractor from any obligation hereunder. After Delivery Date, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor's fault or negligence.

5.4 DELIVERY

Delivery must be made during Purchaser's normal work hours and within time frames either:

1. required in the Solicitation; or
2. if requested in the Solicitation, proposed by Contractor in its Bid or Proposal and subsequently accepted by the OSP; or
3. as otherwise mutually agreed in writing between the Purchaser and Contractor at the time of order placement.

Failure to comply with agreed upon delivery schedule may subject Contractor to damages, including but not limited to Contractor's return of goods at no charge to Purchaser, if Purchaser determines Contractor's failure to deliver as agreed causes the need for cancellation.

The Purchaser may refuse shipment when delivered after normal working hours. The Contractor shall verify specific working hours of individual Purchasers and instruct carrier(s) to deliver accordingly. The acceptance by the Purchaser of late performance, with or without objection or reservation by the Purchaser, shall not waive the right to claim damage for such breach, nor preclude the OSP or Purchaser from pursuing any other remedy provided herein, including termination, nor shall such acceptance of late performance constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.

All deliveries are to be made to the applicable delivery location as indicated in the Order Document. When applicable, the Contractor shall take all necessary actions to safeguard items during inclement weather. In no case shall the Contractor initiate performance prior to receipt of written or verbal authorization from authorized Purchasers. Expenses incurred otherwise shall be borne solely by the Contractor.

5.5 SITE SECURITY

While on Purchaser's premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations.

5.6 INSPECTION AND REJECTION

The Purchaser's inspection of all materials, supplies and equipment upon delivery is for the purpose of forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for Acceptance. Such inspection shall not be construed as final acceptance, or as acceptance of the materials, supplies or equipment, if the materials, supplies or equipment does not conform to contractual requirements. If there are any apparent defects in the materials, supplies, or equipment at the time of delivery, the Purchaser will promptly notify the Contractor. Without limiting any other rights, the Purchaser may require the Contractor to: (1) repair or replace, at Contractor's expense, any or all of the damaged goods; (2) refund the price of any or all of the damaged goods; or (3) accept the return of any or all of the damaged goods.

The state reserves the right to independently test, at supplier's expense, any product of questionable freshness, quality, or origin delivered against this Contract.

5.7 TREATMENT OF ASSETS

1. Title to all property furnished by the OSP and/or Purchaser shall remain in the OSP and/or Purchaser, as appropriate. Title to all property furnished by the Contractor, the cost for which the Contractor is entitled to be reimbursed as a direct item of cost under this contract, shall pass to and vest in the Purchaser upon delivery of such property by the Contractor and Acceptance by the Purchaser. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in the Purchaser upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the Purchaser in whole or in part, whichever first occurs.
2. Any property of the OSP and/or Purchaser furnished to the Contractor shall, unless otherwise provided herein or approved by the OSP and/or Purchaser, be used only for the performance of this Contract.
3. The Contractor shall be responsible for damages as a result of any loss or damage to property of the OSP and/or Purchaser which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances.

4. If any OSP and/or Purchaser property is lost, destroyed, or damaged, the Contractor shall immediately notify the OSP and/or Purchaser and shall take all reasonable steps to protect the property from further damage.
5. The Contractor shall surrender to the OSP and/or Purchaser all property of the OSP and/or Purchaser prior to settlement upon completion, termination, or cancellation of this contract.
6. All reference to the Contractor under this clause shall also include Contractor's employees, agents or Subcontractors.

5.8 LABELING

Individual shipping cartons shall be labeled with the name of the ordering agency, order number, contractor, item number, and where applicable, date of manufacture, batch number, storage requirements, conditions, and recommended shelf life. Contractors are encouraged to offer product packaging with recycled content.

6 PAYMENT

6.1 ADVANCE PAYMENT PROHIBITED

No advance payment shall be made for the Products and Services furnished by Contractor pursuant to this Contract.

6.2 IDENTIFICATION

All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Contract shall be identified by the Contract number and the applicable Purchaser's order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.

6.3 PAYMENT, INVOICING AND DISCOUNTS

Payment is the sole responsibility of, and will be made by, the Purchaser.

Contractor shall provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address indicated in the purchase order.

Each invoice shall be identified by the associated Contract Number; the Contractor's Statewide Vendor registration number assigned by Washington State Office of Financial Management (OFM), the applicable Purchaser's order number, and shall be in U.S. dollars. Invoices shall be prominently annotated by the Contractor with all applicable prompt payment and/or volume discount(s) and shipping charges unless otherwise specified in the Solicitation. Hard copy credit memos are to be issued when the state has been overcharged.

Invoices for payment will accurately reflect all discounts due the Purchaser. Invoices will not be processed for payment, nor will the period of prompt payment discount commence, until receipt of a properly completed invoice denominated in

U.S. dollars and until all invoiced items are received and satisfactory performance of Contractor has been accepted by the Purchaser. If an adjustment in payment is necessary due to damage or dispute, any prompt payment discount period shall commence on the date final approval for payment is authorized.

Under Chapter 39.76 RCW , if Purchaser fails to make timely payment(s), Contractor may invoice for 1% per month on the amount overdue or a minimum of \$1.00. Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with Contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor. If the Contractor fails to make timely payment(s) or issuance of credit memos, the Purchaser may impose a 1% per month on the amount overdue.

Payment for materials, supplies and/or equipment received and for services rendered shall be made by Purchaser and be redeemable in U.S. dollars. Unless otherwise specified, the Purchaser's sole responsibility shall be to issue this payment. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the Contractor.

6.4 TAXES, FEES AND LICENSES

Taxes:

Where required by statute or regulation, the Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. Unless otherwise indicated, the Purchaser agrees to pay State of Washington taxes on all applicable materials, supplies, services and/or equipment purchased. No charge by the Contractor shall be made for federal excise taxes and the Purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

Collection of Retail Sales and Use Taxes:

In general, Contractors engaged in retail sales activities within the State of Washington are required to collect and remit sales tax to Department of Revenue (DOR). In general, out-of-state Contractors must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in the State of Washington is significantly associated with Contractor's ability to establish or maintain a market for its products in Washington State. Examples of such activity include where the Contractor either directly or by an agent or other representative:

1. Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business;
2. Maintains an in-state inventory or stock of goods for sale;
3. Regularly solicits orders from Purchasers located within the State of Washington via sales representatives entering the State of Washington;

4. Sends other staff into the State of Washington (e.g. product safety engineers, etc.) to interact with Purchasers in an attempt to establish or maintain market(s); or
5. Other factors identified in WAC 458-20.

Department of Revenue Registration for Out-of-State Contractors:

Out-of-state Contractors meeting any of the above criteria must register and establish an account with the Department of Revenue. Refer to WAC 458-20-193, and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state Contractors are not required to collect and remit "use tax," Purchasers located in the State of Washington are responsible for paying this tax, if applicable, directly to the Department of Revenue.

Fees/Licenses:

After award of Contract, and prior to commencing performance under the Contract, the Contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for Contract performance. It is the Contractor's sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this Contract.

Customs/Brokerage Fees:

Contractor shall take all necessary actions, including, but not limited to, paying all customs, duties, brokerage, and/or import fees, to ensure that materials, supplies, and/or equipment purchased under the Contract are expedited through customs. Failure to do so may subject Contractor to liquidated damages as identified herein and/or to other remedies available by law or Contract. Neither the OSP nor the Purchaser will incur additional costs related to Contractor's payment of such fees.

Taxes on Invoice:

Contractor shall calculate and enter the appropriate Washington State and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with WAC 458-20-247.

6.5 MINORITY AND WOMEN'S BUSINESS ENTERPRISE (MWBE) PARTICIPATION

If minority or woman owned business participation was identified in Bidder's Response to SOLICITATION # 01910, Contractor shall provide Purchaser an *Affidavit of Amounts Paid* with each invoice for payment and within thirty (30) days of Purchasers request. The *Affidavit of Amounts Paid* shall either state that Contractor still maintains its MWBE certification, or state that its Subcontractor(s) still maintain(s) its/their MWBE certification(s) and specify the amounts paid to each certified MWBE Subcontractor under this Contract. Contractor shall maintain records supporting the *Affidavit of Amounts Paid* in accordance with this Contract's **Retention of Records** section.

6.6 OVERPAYMENTS TO CONTRACTOR

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

6.7 AUDITS

The state reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing may be considered complete cause for contract termination.

7 QUALITY ASSURANCE

7.1 RIGHT OF INSPECTION

Contractor shall provide right of access to its facilities to OSP, or any of OSP's officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

7.2 CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

7.3 PRODUCT WARRANTY

The factory and/or manufacturer's warranty, which shall cover 100% parts and labor for the entire unit. This warranty must be honored by all authorized factory and/or manufacturer's dealerships.

Contractor shall be liable for all costs associated with warranty repair(s), including, but not limited to, materials, parts, labor, and transport of equipment that are disabled due to the failure of the equipment during the warranty period.

Warranty period shall be for a minimum of one (1) year after equipment is issued to the End User, or as specified in the solicitation document.

Participating WIC agencies are required to keep a record of such issuance on file for reference.

The Contractor must be capable of and will be liable for providing repair parts and supply support for a period of ten (10) years after the delivery date of the equipment.

In the event of conflict between Contract terms and conditions and Contractor's submitted warranty, the Contract terms and conditions shall prevail; except, to afford the State maximum benefits, the OSP may avail itself of the Contractor's warranty if deemed more beneficial to the State.

7.4 WARRANTIES

Contractor warrants that all materials, supplies, services and/or equipment provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any materials, supplies, service and/or equipment, and inspection incidental thereto, by the Purchaser shall not alter or affect the obligations of the Contractor or the rights of the Purchaser.

7.5 COST OF REMEDY

Cost of Remedying Defects: All defects, indirect and consequential costs of correcting, removing or replacing any or all of the defective materials or equipment will be charged against the Contractor.

7.6 TRAINING

Upon request by a Participating Entity, Contractor shall provide a minimum of 1 hour training for local agency WIC staff on assembly, use and cleaning of equipment and handling and storage of pumped milk. Locations and times will be designated by each WSCA/WIC office. Regional training may be permitted if the Participating Entity agrees. Any costs for training shall be paid by the Contractor. Training materials shall be provided by the Contractor. Such assistance shall be available within 60 calendar days after delivery of product upon request. Contractor shall provide appropriate training documentation or operating documentation covering all functionalities and required operator maintenance issues. A training video may replace the in-person training for locations that are outside of the continental US. Participating Entities may also request specific training as an as needed basis at no cost to the Participating Entity.

8 INFORMATION AND COMMUNICATIONS

8.1 ADVERTISING

Contractor shall not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from the Contract Administrator.

8.2 BREAST MILK SUBSTITUTES

WIC is federally mandated to promote and support breastfeeding. Research indicates that the addition of breast milk substitutes (infant formula) to the diet of breastfeeding infants harms breastfeeding and shortens its duration.

Contractor agrees that they are not a subsidiary or wholly-owned by a company that manufactures infant formula. If any change in this status occurs, Contractor will be required to notify the Contract Administrator within 60 days of this change. All Participating Entities will be notified of this change and may, at their own discretion, choose to terminate their Participating Addendum with 30 days written notice to the Contractor.

8.3 RETENTION OF RECORDS

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and the provision of materials, supplies, services and/or equipment described herein, including, but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of six (6) years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review, or audit by the OSP, personnel duly authorized by the OSP, the Washington State Auditor's Office, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

8.4 PROPRIETARY OR CONFIDENTIAL INFORMATION

To the extent consistent with Chapter 42.56 RCW, the Public Disclosure Act, the OSP shall maintain the confidentiality of Contractor's information marked confidential or proprietary. If a request is made to view Contractor's proprietary information, the OSP will notify Contractor of the request and of the date that the records will be released to the requester unless Contractor obtains a court order enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, the OSP will release the requested information on the date specified.

The State's sole responsibility shall be limited to maintaining the above data in a secure area and to notify Contractor of any request(s) for disclosure for so long as the OSP retains Contractor's information in the OSP records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are exempt from disclosure.

8.5 NON-ENDORSEMENT AND PUBLICITY

Neither the OSP nor the Purchasers are endorsing the Contractor's Products or Services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to the OSP, any Purchaser or the state of Washington in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of the OSP.

Material that is delivered under this Contract, but that does not originate there from ("Preexisting Material"), shall be transferred to Purchaser with a nonexclusive, royalty-free, irrevocable license to publish, translate, reproduce, deliver, perform, display, and dispose of such Preexisting Material, and to authorize others to do so except that such license shall be limited to the extent to which Contractor has a right to grant such a license. Contractor shall exert all reasonable effort to advise Purchaser at the time of delivery of Preexisting Material furnished under this Contract, of all known or potential infringements of publicity, privacy or of intellectual property contained therein and of any portion of such document which was not produced in the performance of this Contract. Contractor agrees to obtain, at its own expense, express written consent of the copyright holder for the inclusion of Preexisting Material. Purchaser shall receive prompt written notice of each notice or claim of copyright infringement or infringement of other intellectual property right worldwide received by Contractor with respect to any Preexisting Material delivered under this Contract. Purchaser shall have the right to modify or remove any restrictive markings placed upon the Preexisting Material by Contractor.

8.6 PROTECTION OF CONFIDENTIAL AND PERSONAL INFORMATION

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either Chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential

Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

"Personal information" including, but not limited to, "Protected Health Information" (PHI) under Health Insurance Portability And Accountability Act (HIPAA), individuals' names, addresses, phone numbers, birth dates, and social security numbers collected, used, or acquired in connection with this Contract shall be protected against unauthorized use, disclosure, modification or loss.

HIPAA establishes national minimum standards for the use and disclosure of certain health information. The Contractor must comply with all HIPAA requirements and rules when determined applicable by the Purchaser. If Purchaser determines that (1) Purchaser is a "covered entity" under HIPAA, and that (2) Contractor will perform "business associate" services and activities covered under HIPAA, then at Purchaser's request, Contractor agrees to execute Purchaser's business associate Contract in compliance with HIPAA.

Contractor shall ensure its directors, officers, employees, Subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the Agency or as otherwise required by law.

Any breach of this provision may result in termination of the Contract and demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the State of Washington and the Purchaser for any damages related to both: (1) the Contractor's unauthorized use of personal information and (2) the unauthorized use of personal information by unauthorized persons as a result of Contractor's failure to sufficiently protect against unauthorized use, disclosure, modification, or loss.

Contractor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Contractor's records shall be subject to inspection, review or audit in accordance with Retention of Records.

Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Immediately upon expiration or termination of this Contract, Contractor shall, at Purchaser's option: (i) certify to Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Contractor to protect Purchaser's Confidential Information.

9 GENERAL PROVISIONS

9.1 GOVERNING LAW/VENUE

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9.2 SEVERABILITY

Severability: If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

9.3 SURVIVORSHIP

All transactions executed for Products and Services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, Prices and Price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Ownership/Rights in Data; Contractor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Section Headings, Incorporated Documents and Order of Precedence; Publicity; Retention of Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes; and Limitation of Liability shall survive the termination of this Contract.

9.4 INDEPENDENT STATUS OF CONTRACTOR

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this Contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW, or Title 51 RCW.

9.5 GIFTS AND GRATUITIES

Contractor shall comply with all state laws regarding gifts and gratuities, including but not limited to: RCW 43.19.1937, RCW 43.19.1939, RCW 42.52.150, RCW 42.52.160, and RCW 42.52.170 under which it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business or contract activities.

Under RCW 43.19.1937 and the Ethics in Public Service Law, Chapter 42.52 RCW state officers and employees are prohibited from receiving, accepting, taking or seeking gifts (except as permitted by RCW 42.52.150) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

9.6 IMMUNITY AND HOLD HARMLESS

To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless State, agencies of State and all officials, agents and employees of State, from and against all claims for injuries, death or damage to property arising out of or resulting from the performance of the contract. Contractor's obligation to indemnify, defend, and hold harmless includes any claim by Contractors' agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the contract. Contractor shall be required to indemnify, defend, and hold harmless the State only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

Contractor waives its immunity under Title 51 to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

9.7 PERSONAL LIABILITY

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Washington when executing their official duties in good faith, be in any way personally liable or responsible for any

agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

9.8 INSURANCE

General Requirements:

Contractor shall, at their own expense, obtain and keep in force insurance as follows until completion of the Contract. Upon request, Contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Washington that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, will result in Contract cancellation.

Contractor shall include all Subcontractors as insureds under all required insurance policies, or shall furnish separate Certificates of Insurance and endorsements for each Subcontractor. Subcontractor(s) must comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

All insurance provided in compliance with this Contract shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the state.

Specific Requirements:

Employers Liability (Stop Gap): The Contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than \$1,000,000.00. The State of Washington will not be held responsible in any way for claims filed by the Contractor or their employees for services performed under the terms of this Contract.

Commercial General Liability Insurance: The Contractor shall at all times during the term of this Contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for bodily injury and property damage arising out of services provided under this Contract. This insurance shall cover such claims as may be caused by any act, omission, or negligence of the Contractor or its officers, agents, representatives, assigns, or servants.

The insurance shall also cover bodily injury, including disease, illness and death, and property damage arising out of the Contractor's premises/operations, independent Contractors, products/completed operations, personal injury and advertising injury, and contractual liability (including the tort liability of another assumed in a business Contract), and contain separation of insured's (cross liability) conditions.

Contractor waives all rights against the State of Washington for the recovery of damages to the extent they are covered by general liability or umbrella insurance.

The limits of liability insurance shall not be less than as follows:

General Aggregate Limits (other than products-completed operations)	\$2,000,000
Products-Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury Aggregate	\$1,000,000
Each Occurrence (applies to all of the above)	\$1,000,000
Fire Damage Limit (per occurrence)	\$ 50,000
Medical Expense Limit (any one person)	\$5,000

Business Auto Policy (BAP):

In the event that services delivered pursuant to this Contract involve the use of vehicles, or the transportation of clients, automobile liability insurance shall be required. The coverage provided shall protect against claims for bodily injury, including illness, disease, and death; and property damage caused by an occurrence arising out of or in consequence of the performance of this service by the Contractor, Subcontractor, or anyone employed by either.

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit not less than \$1,000,000 per occurrence. The business auto liability shall include Hired and Non-Owned coverage.

Contractor waives all rights against the State of Washington for the recovery of damages to the extent they are covered by business auto liability or commercial umbrella liability insurance.

Additional Insurance Provisions:

All above insurance policies shall include, but not be limited to, the following provisions:

Additional Insured:

The State of Washington and all authorized Purchasers shall be named as an additional insured on all general liability, umbrella, excess, and property insurance policies. All policies shall be primary over any other valid and collectable insurance.

Notice of Policy(s) Cancellation/Non-renewal:

For insurers subject to Chapter 48.18 RCW (Admitted and regulated by the Washington State Insurance Commissioner) a written notice shall be given to the director of purchasing or designee forty-five (45) calendar days prior to cancellation or any material change to the policy(s) as it relates to this Contract. Written notice shall include the affected Contract reference number.

Surplus Lines:

For insurers subject to Chapter 48.15 RCW (Surplus Lines) a written notice shall be given to the director of purchasing or designee twenty (20) calendar days prior to

cancellation or any material change to the policy(s) as it relates to this Contract. Written notice shall include the affected Contract reference number.

Cancellation for Non-payment to Premium:

If cancellation on any policy is due to non-payment of premium, a written notice shall be given the director of purchasing or designee ten (10) calendar days prior to cancellation. Written notice shall include the affected Contract reference number.

Identification:

Policy(s) and Certificates of Insurance shall include the affected Contract reference number.

Insurance Carrier Rating:

The insurance required above shall be issued by an insurance company authorized to do business within the State of Washington. Insurance is to be placed with a carrier that has a rating of A- Class VII or better in the most recently published edition of Best's Reports. Any exception must be reviewed and approved by the Risk Manager for the State of Washington, by submitting a copy of the Contract and evidence of insurance before Contract commencement. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and Chapter 284-15 WAC.

Excess Coverage:

The limits of all insurance required to be provided by the Contractor shall be no less than the minimum amounts specified. However, coverage in the amounts of these minimum limits shall not be construed to relieve the Contractor from liability in excess of such limits.

Limit Adjustments:

The state reserves the right to increase or decrease limits as appropriate.

9.9 INDUSTRIAL INSURANCE COVERAGE

The Contractor shall comply with the provisions of Title 51 RCW Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, the OSP may terminate this Contract. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from the Contractor.

9.10 NONDISCRIMINATION

During the performance of this Contract, the Contractor shall comply with all applicable federal and state nondiscrimination laws, regulations and policies, including, but not limited to, Title VII of the Civil Rights Act, 42 U.S.C. section 12101 et. seq.; the Americans with Disabilities Act (ADA); and, Chapter 49.60 RCW, Discrimination – Human Rights Commission.

9.11 OSHA AND WISHA REQUIREMENTS

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Administration (OSHA) and, if manufactured or stored in the State of Washington, the Washington Industrial Safety and Health Act (WISHA) and the standards and regulations issued there under, and certifies that all items furnished and purchased will conform to and comply with said laws, standards and regulations. Contractor further agrees to indemnify and hold harmless OSP and Purchaser from all damages assessed against Purchaser as a result of Contractor's failure to comply with those laws, standards and regulations, and for the failure of the items furnished under the Contract to so comply.

9.12 ANTITRUST

The state maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the Purchaser. Therefore, the Contractor hereby assigns to the State of Washington any and all of the Contractor's claims for such price fixing or overcharges which arise under federal or state antitrust laws, relating to the materials, supplies, services and/or equipment purchased under this Contract.

9.13 WAIVER

Failure or delay of the OSP or Purchaser to insist upon the strict performance of any term or condition of the Contract or to exercise any right or remedy provided in the Contract or by law; or the OSP's or Purchaser's acceptance of or payment for materials, supplies, services and/or equipment, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the OSP or Purchaser to insist upon the strict performance of the entire agreement by the Contractor. In the event of any claim for breach of Contract against the Contractor, no provision of this Contract shall be construed, expressly or by implication, as a waiver by the OSP or Purchaser of any existing or future right and/or remedy available by law.

10 DISPUTES AND REMEDIES

10.1 PROBLEM RESOLUTION AND DISPUTES

Problems arising out of the performance of this Contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. If a problem persists and cannot be resolved, it may be escalated within each organization.

In the event a bona fide dispute concerning a question of fact arises between OSP or the Purchaser and Contractor and it cannot be resolved between the parties through the normal escalation processes, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to

review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.

The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Both parties agree to be bound by the determination of the Dispute Resolution Panel.

Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible.

OSP, the Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by Purchaser for materials, supplies, services and/or equipment being provided by Contractor, Contractor shall continue providing materials, supplies, services and/or equipment pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

10.2 ADMINISTRATIVE SUSPENSION

When it is in the best interest of the state, the OSP may at any time, and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days per event by written notice from the Contract Administrator to the Contractor's Representative. Contractor shall resume performance on the next business day following the 30th day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the Contractor can be demanded and required to resume performance within the 30 day suspension period by the Contract Administrator providing the Contractor's Representative with written notice of such demand.

10.3 FORCE MAJEURE

The term "force majeure" means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure.

Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by Contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.

Rights Reserved: The OSP reserves the right to authorize an amendment to this Contract, terminate the Contract, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the State.

10.4 ALTERNATIVE DISPUTE RESOLUTION FEES AND COSTS

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

10.5 NON-EXCLUSIVE REMEDIES

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

10.6 LIMITATION OF LIABILITY

The parties agree that neither Contractor, OSP nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Retention of

Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

Neither the Contractor, the OSP nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the Contractor, the OSP or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than the OSP or the Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Contractor, the OSP or the Purchaser, or their respective Subcontractors.

If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

10.7 FEDERAL FUNDING

In the event that a federally funded acquisition results from this procurement, the contractor may be required to provide additional information (free of charge) at the request of the OSP or purchaser: Further, the contractor may be subject to those federal requirements specific to the commodity.

10.8 FEDERAL RESTRICTIONS ON LOBBYING

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

10.9 FEDERAL DEBARMENT AND SUSPENSION

The contractor certifies, that neither it nor its "principals" (as defined in 49 CFR. 29.105 (p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

11 CONTRACT TERMINATION

11.1 MATERIAL BREACH

A Contractor may be Terminated for Cause by the OSP, at the sole discretion of the Contract Administrator, for failing to perform a contractual requirement or for a material breach of any term or condition. Material breach of a term or condition of the Contract may include but is not limited to:

1. Contractor failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Contract;
2. Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the contract;
3. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
4. Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Contractor's proper performance hereunder;
5. Appointment of any receiver, trustee, or similar official for Contractor or any of the Contractor's property and such appointment endangers the Contractor's proper performance hereunder;
6. A determination that the Contractor is in violation of federal, state, or local laws or regulations and that such determination renders the Contractor unable to perform any aspect of the Contract.

11.2 OPPORTUNITY TO CURE

In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the OSP may issue a written cure notice. The Contractor may have a period of time in which to cure. The OSP is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely within the discretion of the OSP. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages, or otherwise affects any other remedies available against Contractor under the Contract or by law.

If the breach remains after Contractor has been provided the opportunity to cure, the OSP may do any one or more of the following:

1. Exercise any remedy provided by law;
2. Terminate this Contract and any related Contracts or portions thereof;
3. Procure replacements and impose damages as set forth elsewhere in this Contract;
4. Impose actual or liquidated damages;

5. Suspend or bar Contractor from receiving future Solicitations or other opportunities;
6. Require Contractor to reimburse the state for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Contract.

11.3 TERMINATION FOR CAUSE

In the event the Contract Administrator, in its sole discretion, determines that the Contractor has failed to comply with the conditions of this Contract in a timely manner or is in material breach, the Contract Administrator has the right to suspend or terminate this Contract, in part or in whole. The Contract Administrator shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days or as otherwise specified by the Contract Administrator, or if such corrective action is deemed by the Contract Administrator to be insufficient, the Contract may be terminated. The Contract Administrator reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by the Contract Administrator to terminate the Contract.

In the event of termination, the OSP shall have the right to procure for all Purchasers any replacement materials, supplies, services and/or equipment that are the subject of this Contract on the open market. In addition, the Contractor shall be liable for damages as authorized by law including, but not limited to, any price difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

If it is determined that: (1) the Contractor was not in material breach; or (2) failure to perform was outside of Contractor's or its Subcontractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience". The rights and remedies of the OSP and/or the Purchaser provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

11.4 TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, OSP, at the sole discretion of the Contract Administrator, may terminate this Contract, in whole or in part by giving thirty (30) calendar days written notice beginning on the second day after mailing to the Contractor. If this Contract is so terminated, Purchasers shall be liable only for payment required under this Contract for properly authorized services rendered, or materials, supplies and/or equipment delivered to and Accepted by the Purchaser prior to the effective date of Contract termination. Neither the OSP nor the Purchaser shall have any other obligation whatsoever to the Contractor

for such termination. This Termination for Convenience clause may be invoked by the OSP when it is in the best interest of the State of Washington.

11.5 TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the OSP and/or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, the OSP may terminate this Contract, in whole or in part, by seven (7) calendar days written notice to Contractor.

11.6 TERMINATION FOR CONFLICT OF INTEREST

OSP may terminate this Contract by written notice to Contractor if it is determined, after due notice and examination, that any party to this Contract has violated Chapter 42.52RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, the OSP and /or Purchaser shall be entitled to pursue the same remedies against Contractor as it could pursue in the event that the Contractor breaches this Contract.

11.7 TERMINATION BY MUTUAL AGREEMENT

The OSP and the Contractor may terminate this Contract in whole or in part, at any time, by mutual agreement.

11.8 TERMINATION PROCEDURE

In addition to the procedures set forth below, if the OSP terminates this Contract, Contractor shall follow any procedures the Contract Administrator specifies in the termination notice.

Upon termination of this Contract and in addition to any other rights provided in this Contract, Contract Administrator may require the Contractor to deliver to the Purchaser any property specifically produced or acquired for the performance of such part of this contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Purchaser shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service(s) Accepted by the Purchaser, and the amount agreed upon by the Contractor and the Purchaser for (i) completed materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which are Accepted by the Purchaser, and (iv) the protection and preservation of property, unless the termination is for cause, in which case the OSP and the Purchaser shall determine the extent of the liability of the Purchaser. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract. The Purchaser may withhold from any amounts due the Contractor such sum as the Contract Administrator and

Purchaser determine to be necessary to protect the Purchaser against potential loss or liability.

The rights and remedies of the OSP and/or the Purchaser provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a termination notice, and except as otherwise expressly directed in writing by the Contract Administrator, the Contractor shall:

1. Stop all work, order fulfillment, shipments, and deliveries under the Contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to the Contract except as is necessary to complete or fulfill such portion of the Contract that is not terminated;
3. Complete or fulfill such portion of the Contract that is not terminated in compliance with all contractual requirements;
4. Assign to the Purchaser, in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Purchaser has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator and/or the Purchaser to the extent Contract Administrator and/or the Purchaser may require, which approval or ratification shall be final for all the purposes of this clause;
6. Transfer title to the Purchaser and deliver in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser any property which, if the contract had been completed, would have been required to be furnished to the Purchaser;
7. Take such action as may be necessary, or as the Contract Administrator and/or the Purchaser may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the OSP and/or the Purchaser has or may acquire an interest.

12 CONTRACT EXECUTION

12.1 PARTIES

This Contract ("Contract") is entered into by and between the State of Washington, acting by and through OSP, an agency of Washington state

government located at 210 11th Ave SW Olympia, WA 98504, and the Awarded Contractor, a corporation/sole proprietor or other business form licensed to conduct business in the state of Washington, for the purpose of providing Manual and Electric Breast Pumps, Double Pump Kits, and related accessories.

12.2 ENTIRE AGREEMENT

This Contract document and all subsequently issued amendments comprise the entire agreement between the OSP and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract.

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Contractor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, Price, quality, or Specifications of this Contract will be effective without the written consent of both parties.

12.3 ORDER OF PRECEDENCE, INCORPORATED DOCUMENTS, CONFLICT AND CONFORMITY

Incorporated Documents

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein:

1. The OSP's Solicitation document 01910 with all attachments and exhibits, and all amendments thereto;
2. Contractor's response to the Solicitation 01910 dated [date];
3. The terms and conditions contained on Purchaser's Order Documents, if used;
4. Award Letter; and
5. All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to affect the sale of the Product to the Purchaser.

Order of Precedence

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal and State of Washington statutes and regulations
2. Mutually agreed written amendments to this Contract

3. Award Letter describing the extent of the award or open administrative matters
4. This Contract
5. The OSP's Solicitation document (IFB) with all attachments and exhibits, and all amendments thereto
6. Western States Contracting Alliance (WSCA) Standard Terms and Conditions
7. Contractor's response to the Solicitation
8. Any other provision, term, or materials incorporated into the Contract by reference.

Conflict: To the extent possible, the terms of this Contract shall be read consistently.

Conformity: If any provision of this Contract violates any Federal or State of Washington statute or rule of law, it is considered modified to conform to that statute or rule of law.

12.4 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service mail, or by electronic mail, to the parties at the addresses, fax numbers, or e-mail addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Contractor or OSP, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and OSP further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

LEGAL NOTICE CONTACT INFORMATION:

<u>To Contractor at:</u>	<u>To the State of Washington at:</u>
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<p>[Contractor]</p> <p>Attn:</p> <p>[Contractor address and contact information]</p>	<p>State of Washington Department of General Administration Office of State Procurement</p> <p>Attn: Melissa Cox – Legal Notice</p> <p>210 11th Ave SW, Room 201 - GA Bldg Olympia, WA 98504-1017 Phone: 360-902-7400/Fax: 360-586-2426 melissa.cox@ga.wa.gov</p>
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12.5 LIENS, CLAIMS AND ENCUMBRANCES

All materials, equipment, supplies and/or services shall be free of all liens, claims, or encumbrances of any kind, and if the OSP or the Purchaser requests, a formal release of same shall be delivered to the respective requestor.

12.6 AUTHORITY TO BIND

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

12.7 COUNTERPARTS

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

CONTRACT SIGNATURES

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all appendices and attachments, do agree in each and every particular and have thus set their hands hereunto.

This Contract is effective this _____ day of _____, _____.
Date completed by OSP only

Approved – Contractor

Business Name

Approved - State

State of Washington, Department of General
Administration, Office of State Procurement

Signature

Signature

Print or Type Name Date

Print or Type Name Date

Title

Title

Additional OSP Approval (if necessary): _____

APPENDIX C STANDARD DEFINITIONS

This section contains definitions of terms commonly used in Solicitations conducted by the State of Washington, Office of State Procurement. Additional definitions may also be found in Chapter 43.19 RCW and WAC 236-48-003, and all terms contained herein will be read consistently with those definitions.

Acceptance	The materials, supplies, services, and/or equipment have passed appropriate Inspection. In the event that there is a formal Acceptance Testing period required in the Solicitation document then acceptance is formalized in writing. If there is no Acceptance Testing, acceptance may occur when the Products are delivered and inspected.
Acceptance Testing	The process for ascertaining that the materials, supplies, services, and/or equipment meets the standards set forth in the Solicitation, prior to Acceptance by the Purchaser.
Agency	Includes State of Washington institutions, the offices of the elective state officers, the Supreme Court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state. In addition, colleges, community colleges, and universities who choose to participate in State Contract(s) are included. "Agency" does not include the legislature.
All or Nothing	<p>The result of a competitive Solicitation that requires that a Contract be executed with a single Bidder for delivery of goods and/or services. In the event that suppliers are unable to deliver the entirety of the goods and/or services required, no Contract is executed. No partial fulfillment opportunities are available as a result of the Solicitation</p> <p>A method of award resulting from a competitive Solicitation by which the OSP will award the resulting Contract to a single Bidder.</p> <p>Also, a designation the Bidder may use in its Bid or Response to indicate its offer is contingent upon full award and it will not accept a partial award.</p>

Alternate	A substitute offer of materials, supplies, services and/or equipment that is not at least a functional Equal in features, performance and use and which materially deviates from one or more of the specifications in a competitive Solicitation.
Amendment	A change to a legal document. For the purposes of a Solicitation document, an amendment shall be a unilateral change issued by the OSP, at its sole discretion.
Authorized Representative	An individual designated by the Bidder or Contractor to act on its behalf and with the authority to legally bind the Bidder or Contractor concerning the terms and conditions set forth in Solicitation, Bid and Contract documents.
Bid	A sealed written offer to perform a Contract to provide materials, supplies, services, and/or equipment in reply to an Invitation For Bid (IFB).
Bidder	A Vendor who submits a Bid or Proposal in reply to a Solicitation.
Business Days	Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.
Calendar Days	Consecutive days of the year including weekends and holidays, each of which commence at 12:00:01 a.m. and end at Midnight, Pacific Time. When "days" are not specified, Calendar Days shall prevail.
Contract	An agreement, or mutual assent, between two or more competent parties with the elements of the agreement being offer, acceptance, and consideration.
Contract Administrator	The person designated to manage the resultant Contract for the OSP. The primary contact for the OSP with Purchasers and Contractor on a specific Contract.
Contractor	Individual, company, corporation, firm, or combination thereof with whom the OSP develops a Contract for the procurement of materials, supplies, services, and/or equipment. It shall also include any Subcontractor retained by Contractor as permitted under the terms of the Contract.
End-User	A person enrolled in a WIC program who is the recipient of equipment issued by a WIC clinic.
Equal	An offer of materials, supplies, services and/or equipment that meets or exceeds the quality, performance and use of the specifications identified in a Solicitation.

Estimated Useful Life	The estimated time from the date of acquisition to the date of replacement or disposal, determined in any reasonable manner.
Inspection	An examination of delivered material, supplies, services, and/or equipment prior to Acceptance aimed at forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for Acceptance. Inspection may include a high level visual examination or a more thorough detailed examination as is customary to the type of purchase, as set forth in the solicitation document and/or as agreed between the parties. Inspection shall be acknowledged by an authorized signature of the Purchaser.
Invitation For Bid (IFB)	The form utilized to solicit Bids in the formal, sealed Bid procedure and any amendments thereto issued in writing by the OSP. Specifications and qualifications are clearly defined.
Lead Time/After Receipt Of Order (ARO)	The period of time between when the Contractor receives the order and the Purchaser receives the materials, supplies, equipment, or services order.
Life Cycle Cost	The total cost of an item to the state over its Estimated Useful Life, including costs of selection, acquisition, operation, maintenance, and where applicable, disposal, as far as these costs can reasonably be determined, minus the salvage value at the end of its estimated useful life.
Multi-User Breast Pump	A multi-user breast pump is defined as a unit that operates on a "closed system", meaning that it is impossible for milk to reach the motor. Multi-user pumps have special barriers and filters to prohibit milk from entering the pump motor, which prevents cross-contamination.
Office Of State Procurement	The OSP within the Washington Department of General Administration, Services Division authorized under Chapter 43.19 RCW to develop and administer contracts for goods and services on behalf of state agencies, colleges and universities, non-profit organizations and local governments.
Order Document	A written communication, submitted by a Purchaser to the Contractor, which details the specific transactional elements required by the Purchaser within the scope of the Contract such as delivery date, size, color, capacity, etc. An Order Document may include, but is not limited to field orders, purchase orders, work order or other writings as may be designated by the parties hereto. No additional or alternate terms and conditions on such written

communication shall apply unless authorized by the Contract and expressly agreed between the Purchaser and the Contractor.

Personal-Use Breast Pump	A Personal-Use breast pump is defined as a unit that operates on an "open system", meaning the pump has internal parts that cannot be removed, replaced, or fully sterilized. These pumps are meant for a single user because of the risk of cross-contamination associated with re-using a previously owned pump.
Procurement Coordinator	The individual authorized by the OSP who is responsible for conducting a specific Solicitation.
Product	Materials, supplies, services, and/or equipment provided under the terms and conditions of this Contract.
Proposal	A sealed written offer to perform a Contract to supply materials, supplies, services, and/or equipment in reply to a Request For Proposal (RFP).
Purchaser	The authorized user of the Contract, as identified in the Solicitation, who may or actually does make purchases of material, supplies, services, and/or equipment under the resulting Contract.
OSP	The Office of State Procurement or an Agency authorized by law to conduct acquisition of materials, supplies, services, and/or equipment or delegated that authority by the Office of State Procurement.
Recycled Material	Waste materials and by-products that have been recovered or diverted from solid waste and that can be utilized in place of a raw or virgin material in manufacturing a product and consists of materials derived from post-consumer waste, manufacturing waste, industrial scrap, agricultural wastes and other items, all of which can be used in the manufacture of new or recycled products.
Recycled Content Product	A product containing recycled material.
Request For Proposal (RFP)	The form utilized to solicit Proposals in the formal, sealed Bid procedure and any amendments thereto issued in writing by the OSP. The specifications and qualification requirements are written in an outcome based form allowing for consideration of a broad range of different solutions to meet the procurement need.

Responsible	The ability, capacity, and skill to perform the Contract or provide the service required , including, but not limited to the character, integrity, reputation, judgment, experience, and efficiency of the Bidder; Further considerations may include, but are not limited to whether the Bidder can perform the contract within the time specified, the quality of performance of previous contracts or services, the previous and existing compliance by the Bidder with laws relating to the contract or services and such other information as may be secured having a bearing on the decision to award the contract:
Responsive	A Bid or Proposal that meets all material terms of the Solicitation document.
Response	A Bid or Proposal
Solicitation	The process of notifying prospective Bidders that the OSP desires to receive competitive Bids or Proposals for furnishing specified materials, supplies, services, and/or equipment. Also includes reference to the actual documents used for that process, including: the Invitation For Bids (IFB) or Request For Proposals (RFP), along with all attachments and exhibits thereto.
State	The State of Washington acting by and through the OSP.
State Contract	<p>The written document memorializing the agreement between the successful Bidder and the OSP for materials, supplies, services, and/or equipment and/or administered by the Office of State Procurement on behalf of the State of Washington.</p> <p>“State Contract” does not include the following:</p> <ul style="list-style-type: none"> • Colleges and universities that choose to purchase under <u>RCW 28B.10.029</u> • Purchases made in accordance with state purchasing policy under <u>Washington Purchasing Manual Part 6.11 Best Buy Program</u>; • Purchases made pursuant to authority granted or delegated under <u>RCW 43.19.190(2) or (3)</u> • Purchases authorized as an emergency purchase under <u>RCW 43.19.200(2)</u>; or • Purchases made pursuant to other statutes granting the Agency authority to independently conduct purchases of materials, supplies, services, or equipment.
Subcontractor	A person or business that is, or will be, providing or performing an essential aspect of the Contract under the direction and responsibility of the Contractor and with the agreement of the OSP.

Vendor	A provider of materials, supplies, services, and/or equipment.
Washington's Electronic Business Solution (WEBS)	The Vendor registration and Bidder notification system maintained by the Washington State Department of General Administration located at: www.ga.wa.gov/webs .

Appendix D

Western States Contracting Alliance Standard Contract Terms and Conditions

PARTICIPANTS: The Western States Contracting Alliance (herein WSCA) is a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. Other states and their political subdivisions are also eligible to participate in WSCA contracts. Obligations under this contract are limited to those Participating States who have signed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award(s) will be permissive.

QUALITY ESTIMATES: WSCA does not guarantee to purchase any amount under the contract to be awarded. Estimated quantities are for the purposes of submitting proposals only and are not to be construed as a guarantee to purchase any amount.

SPECIFICATIONS: Any deviation from specifications must be clearly indicated by offeror, otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the IFB states "No substitute". Proposals will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

ACCEPTANCE OR REJECTION OF PROPOSALS: WSCA reserves the right to accept or reject any or all proposals or parts of proposals, and to waive informalities therein.

SAMPLES: Generally, when required, samples will be specifically requested in the Solicitation. Samples, when required, are to be furnished free of charge. Except for those samples destroyed or mutilated in testing, samples will be returned at offeror's request, transportation collect.

CASH DISCOUNT TERMS: Offeror may quote a cash discount based upon early payment; however, discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received

or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

TAXES: Proposal prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.

PATENTS, COPYRIGHTS, ETC.: The Contractor shall release, indemnify and hold the Buyer, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

AWARD: WSCA may award multiple contracts as the result of this solicitation. Awards shall be made to the responsible offeror(s) whose proposal is determined to be the most advantageous to WSCA, taking into consideration price and the other evaluation factors set forth in the IFB.

NON-COLLUSION: By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the Request for Proposal, designed to limit independent bidding or competition.

CANCELLATION: Unless otherwise stated in the special terms and conditions, any contract entered into as a result of this bid may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order. Cancellation of the contract due to Contractor default may be immediate.

DEFAULT AND REMEDIES: Any of the following events shall constitute cause for WSCA to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract WSCA shall issue a written notice of default providing a period in which Contractor shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, WSCA may do one or more of the following: 1. Exercise any remedy provided by law;

2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages; 4. Suspend contractor from receiving future proposal solicitations.

LAWS AND REGULATIONS: Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

CONFLICT OF TERMS: In the event of any conflict between these standard terms and conditions and any special terms and conditions contained in the Solicitation, the special terms and conditions shall govern.

REPORTS: The contractor shall submit quarterly reports to the WSCA Contract Administrator showing the quantities and dollar volume of purchases by each agency.

HOLD HARMLESS: The contractor shall release, protect, indemnify and hold WSCA and the respective states and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, his employees or subcontractors or volunteers.

ORDER NUMBERS: Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

GOVERNING LAW: This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the state sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the contract(s) shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning an order placed against the contract(s) or the effect of an Participating Addendum shall be in the Purchasing Entity's State.

DELIVERY: The prices offered shall be the delivered price to any Participating State agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

WARRANTY: As used herein "Buyer" refers to any Participating State agency or political subdivision. The contractor acknowledges that the Uniform Commercial Code applies to this contract. In general, the contractor warrants that: (a) the product will do what the

salesperson said it would do, (b) the product will live up to all specific claims that the manufacturer makes in their advertisements, (c) the product will be suitable for the ordinary purposes for which such product is used, (d) the product will be suitable for any *special purposes* that the Buyer has relied on the contractor's skill or judgment to consider.

AMENDMENTS: The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA Contract Administrator.

ASSIGNMENT/SUBCONTRACT: Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the WSCA Contract Administrator.

NONDISCRIMINATION: The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

SEVERABILITY: If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

INSPECTIONS: Goods furnished under this contract shall be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or in compliance with proposal specifications, the Buyer may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

FORCE MAJEURE: Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. WSCA may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

HAZARDOUS CHEMICAL INFORMATION: The contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

FIRM PRICE: Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of proposal opening. Prices must remain firm for the full term of the contract.

EXTENSION OF PRICES: In the case of error in the extension of prices in the proposal, the unit prices will govern.

PROPOSAL PREPARATION COSTS: WSCA is not liable for any costs incurred by the offeror in proposal preparation.

CONFLICT OF INTEREST: The contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA participants to any officer or employee of WSCA or participating states to secure favorable treatment with respect to being awarded this contract.

INDEPENDENT CONTRACTOR: The contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.

POLITICAL SUBDIVISION PARTICIPATION: Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) of the Participating States shall be voluntarily determined by the political subdivision. The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

DEBARMENT: The contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by WSCA.

AUDIT OF RECORDS: The contractor agrees to allow WSCA, State and Federal auditors, and state agency staff access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

ENTITY PARTICIPATION: Use of specific WSCA cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

Appendix E
Participating Addendum

Participating
Addendum 01910.doc

APPENDIX F
STATE SPECIFIC TERMS AND CONDITIONS

State of New Jersey Specific Terms and Conditions

State of Arizona Specific Terms and Conditions

State of South Dakota Specific Terms and Conditions

State of Utah Specific Terms and Conditions



STATE OF WASHINGTON
DEPARTMENT OF GENERAL ADMINISTRATION
OFFICE OF STATE PROCUREMENT

210 11th Ave SW Room 201GA Building • Olympia, Washington 98504-1017

<http://www.ga.wa.gov>

Issue Date: October 22, 2010

Invitation for Bid #01910

**The State of Washington on behalf of
The Western States Contracting Alliance (WSCA)**

A Multi-State Contract for:

Breast Pumps and Related Accessories

Amendment No. 1

The purpose of this Amendment is:

1. To name additional Participating Entities who have signified their intent to participate in this Contract;
2. To specify a due date and time for Bidders to submit samples for the bid evaluation; and
3. To provide answers to Bidder's questions submitted via email October 1st through October 22, 2010 and during the Pre-Bid Conference on October 20, 2010.

As a result, IFB # 01910 is amended as follows:

1. Appendix B, Section 1.4, is modified to name Oklahoma and West Virginia as additional states that have signified their intent to participate in the resulting Contract.
2. All samples are due by 5 pm PDT on November 4, 2010. Samples must be delivered to: 210 11th Ave SW, Room 201, General Administration Building, Olympia, WA 98504-1017. The items in the table below, including all related items in the Technical Specification Submittal (Section 6.2.11) must be included.

1.0	Personal-Use Electric Double Breast Pump (must include carrying case).
2.0	Multi-User Double Electric Breast Pump (must include carrying case).
3.0	Double Pump Kit for Multi-User Double Electric Breast Pump
4.0	Manual Breast Pump
6.0	Battery pack (required only if no internal battery option.)

3. The Technical Specifications Submittal imbedded in Section 6.2.11 is replaced in its entirety by Attachment A. Specification changes have been highlighted for easy identification.
4. The Price Sheet Submittal in Section 6.2.12 is amended to make pricing for Items 5a, 5b, and 5c optional. These prices will be excluded from the final cost scoring calculation.
5. The following section addresses bidder's questions posed during the Pre-Bid Conference held at 1 pm PDT on October 20, 2010.

Q1: The entire contract/document must be returned with signatures in place?

A1: Yes, the entire document must be returned as part of bid submittal.

Q2: The opening date and time is blank on Page 9, Section 4.5

A2: The table listed in Section 4.5 is amended to include the bid opening date and time, as follows: November 2, 2010, 2:00 pm PDT.

Q3: What is a P card?

A3: It is a purchasing card (Visa/MasterCard) used by many governmental agencies in lieu of using a purchase order for payment of goods and services.

Q4: Please clarify in Section 5.9 *Contract Administration Fee* what is meant by "Bidder(s) will include this fee in Bid pricing and not as a separate line item to Participating Entities". Is this fee supposed to be calculated and backed into the prices? Then further down in the section it says that an administration fee shall be paid within 30 days after the end of the calendar quarter. We need clarification regarding how the administration fee will be applied. Also, can the administration fee be paid within 45 days of the close of the month/quarter, rather than 30 days?

A4: The WSCA fee of 0.5% should be included in bid pricing, not listed as a separate line item on pricing submittal. Individual states may choose to add their own administrative fee after they have signed a Participating Addendum. Contractor will be responsible for collecting this fee and submitting to the Participating Entity in conformity with the terms of the executed Participating Addendum. This fee will be added to the pricing for those states that require the collection of an administrative fee. The Contractor will not be required to absorb this cost. It is acceptable to submit the administrative fee and corresponding report within 45 days of the close of the quarter.

Q5: Is there a max on the amount of fees that states can charge?

A5: No, there is no maximum fee. The fee is usually set according to state specific statutes.

Q6: The state of CA gives a small business preference of 5%. If we are based in CA does our bid go up 5% automatically?

A6: Specific to this solicitation, the reciprocity penalty would not apply to California businesses because the total value of the Contract is more than \$ 100,000.

Q7: CA directs 25% of their purchases to be from small businesses. Should small business and women owned businesses be factored into the bid process?

A7: Washington state procurement laws do not allow for preferences to be applied bids submitted by small businesses and women owned businesses. As the lead state for this solicitation, we are required to abide by the laws of the state of Washington. Since this solicitation will most likely result in multiple awards, California will have an opportunity

to contract with vendors that meet state specific criteria for small/women owned businesses through the execution of a Participating Addendum(s).

Q8: As stated in the scoring column of the table listed in Section 6.5, “pass” means the bid was submitted as requested?

A8: “Pass” means that the submittal met the material requirements of the solicitation and was determined to be Responsive. Please see Section 6.3 for additional information regarding the evaluation of Pass/Fail Submittals.

Q9: Is the committee doing all of the scoring?

A9: The committee will be scoring the non-cost submittals after Melissa has reviewed each bid to determine if they met the material requirements of the solicitation. Melissa will also be doing the cost calculations.

Q10: Please clarify what the difference is between paragraphs 1 and 2 under Section 1.2 Appendix B Model Contract? Are the states that signed an “Intent to Participate” part of the new bid and if they are, where are the estimated usage numbers? Could this bid include as many as 24 states when you combine paragraph one and two?

A10: Paragraph One lists the 15 states that comprise the Western States Contracting Alliance (WSCA). Paragraph Two lists the states that have signed an Intent to Participate in the new contract. Currently we have 24 Participating Entities that have signed an Intent to Participate. Usage estimates for each Entity are listed in the table below. These usage figures were submitted by each Participating Entity and represent estimates only:

Participating Entity	Estimated Annual Usage
Alaska	\$ 225,000
Arizona	\$ 1,000,000
Arizona, Intertribal Council of	\$ 20,000
California	\$3,500,000
Commonwealth of the Northern Mariana Islands (CNMI)	\$ 6,000
District of Columbia	\$20,000
Guam	\$ 35,000

Hawaii	\$ 75,000
Idaho	\$ 25,000
Kansas	Data Not Provided
Louisiana	\$ 500,000
Missouri	\$ 275,000
Nebraska	\$ 100,000
Nevada	\$ 300,000
New Jersey	\$ 300,000
New Mexico	\$ 1,200,000
Oklahoma	\$ 225,000
Oregon	\$ 400,000
South Dakota	\$ 75,000
Utah	\$ 100,000
Vermont	\$ 40,000
Washington	\$ 400,000
West Virginia	\$ 100,000
Wisconsin	\$ 250,000
Wyoming	\$ 25,000

Q11: Will additional states who have submitted an Intent to Participate be sent to us in an amendment?

A11: Yes, please see the table in A10 above.

Q12: Estimated usage and price sheet usage are listed as different numbers for personal use pumps on the Price Sheet Submittal (Section 6.2.12), which is correct?

A12: Item #1 Personal-Use Pump in Section One of the Price Sheet Submittal, estimated usage should be listed as 64,200.

Q13: In Appendix B Model Contract, Section 2.9, the Statewide Vendor Payment Registration link did not work?

A13: Please use the following link for vendor payment registration-
<http://www.ofm.wa.gov/search.asp?qt=vendor+payment+registration>

Q14: Will a packing slip with the required information suffice or does the information need to be printed on the box itself?

A14: Necessary packaging information must be on the outside of the box. A label on the box is fine. Contents must be identifiable from the outside of the box with information available after the packing slip has been removed.

Q15: Should shipping costs be included in the pricing?

A15: Yes, pricing should be submitted FOB Destination with freight included. Please see Section 5.3 of the Model Contract.

Q16: Is all of the information listed in Section 5.8 and 6.2 of the Model Contract necessary?

A16: No, the Sourcing Team has determined that all of the items listed in Sections 5.8 and 6.2 of the Model Contract are not necessary. As a result, those two sections are amended as follows:

Section 5.8

"Individual shipping cartons shall be labeled with the name of the ordering agency, order number, contractor, item number, and ~~where applicable, date of manufacture, batch number, storage requirements, conditions, and recommended shelf life.~~ Contractors are encouraged to offer product packaging with recycled content."

Section 6.2

"All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Contract shall be identified by the ~~Contract number and the applicable~~ Purchaser's order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders."

Q17: Warranty must be authorized and honored by manufacturers and dealerships? How would dealerships be required to meet the warranty specs when the warranty is through the manufacturer not the dealer?

A17: Only those facilities that the Bidder lists on the Bidder Profile Submittal (Section 6.2.4) will be required to honor the product warranty requirements listed in Section 7.3 of the Model Contract. As a result, the first paragraph of Section 7.3 Model Contract is amended as follows:

"The factory and/or manufacturer's warranty shall cover 100% parts and labor for the entire unit. This warranty must be honored by all authorized factory/and or manufacturer's dealerships that the Bidder lists on Section 6.2.4 *Bidder Profile Submittal* of the IFB."

Q18: In reference to Section 8.2 Breast Milk Substitutes of the Model Contract, can you prohibit a company from bidding if they are affiliated with a formula company? Is this legal?

A18: No, we cannot prohibit a vendor from bidding if they are affiliated with a formula company. As a result, Section 8.2 is amended as follows:

"WIC is federally mandated to promote and support breastfeeding. Research indicates that the addition of breast milk substitutes (infant formula) to the diet of breastfeeding infants harms breastfeeding and shortens its duration.

Contractor agrees to notify the Contract Administrator if they are a subsidiary or wholly-owned by a company that manufactures infant formula. If this change occurs during the term of the contract, Contractor agrees to notify the Contractor Administrator within 60 days of the date that this change occurs. ~~If any change in this status occurs, Contractor will be required to notify the Contract Administrator within 60 days of this change. All Participating Entities will be notified of this change and may, at their own discretion, choose to terminate their Participating Addendum with 30 days written notice to the Contractor."~~

Q19: On page 20, Non-Cost Submittals, are these items going to be subjective?

A19: Yes, Evaluation Team Members will be scoring those submittals using a subjective scoring methodology.

Q20: Is the Sourcing Team going to be the Evaluation Team?

A20: Yes

Q21: Will there be input from all states on the evaluation and selection of Contractors?

A21: No, the evaluation and award will be handled by the Sourcing Team.

Q22: The solicitation references UL Standards as the governing entity for electrical compliance. Must all specifications meet UL Standards? Other governing bodies provide standards for electrical compliance.

A22: The Sourcing Team acknowledges that other governing bodies provide standards for electrical compliance. As a result, electrical components must only meet the FDA Specifications for Class II Medical Devices.

The following questions pertain to the technical specifications in Section 6.2.11

Q23: For Personal-Use Pumps is labeling of contents needed on outside of box? Is serial number requested on outside of box (label) really necessary and why?

A23: The serial number is not required on the outside of box for Personal-Use Pumps. Please see revisions to Technical Specifications in Attachment A of this Amendment.

Q24: Flange sizes, what if a company has a one size fits all product?

A24: Please see revisions to Technical Specifications in Attachment A of this Amendment.

Q25: Specifications state that unit must convert to a hand pump. What if unit cannot be converted?

A25: Please see revisions to Technical Specifications in Attachment A of this Amendment.

Q26: Is a rigid case for the Multi-User Pump required or can this be a soft carrying tote?

A26: A rigid pump case is required due to the frequency of use by multiple users.

Q27: There is no minimum pressure indicated for personal-use pumps.

A27: The specifications were written from research based information. This specification will remain the same.

Q28: Please clarify what the standard size bottle connects to?

A28: Please see revisions to Technical Specifications in Attachment A of this Amendment.

Q29: Can the pump kit accessories be in a separate carrying case or do they need to be included in the case with the pump?

A29: Multi-User pumps and pump kits must be in different shipping cartons. After the multi-user pump and pump kit have been issued to the end user, it is preferable for the pump kit to fit into the case with the multi-user pump.

Q30: A maximum pressure is listed for the Multi-User Pump. Is there a minimum?

A30: No- the performance standard addresses this issue in Item 2.14 of the Technical Specifications.

Q31: Would you be willing to revise wording in Technical Specifications relating to gaskets and flanges to allow for alternate technologies in equipment?

A31: Yes, Please see revisions to Technical Specifications in Attachment A of this Amendment.

Q32: Does equipment have to be compatible with plastic milk collection bags?

A32: No, the Technical Specifications have been revised to remove this requirement.

Q33: For Double Pump Kits, is it acceptable to package in less than 20 kits per case?

A33: No, Double Pump Kits must be packaged 20 kits per case.

Q34: Two difference flange sizes for rigid flanges are necessary?

A34: Yes, unless your product is a one-size fits all, there is a need for larger flange sizes.

Q35: Is it necessary for an actual battery pack or would separate individual batteries be acceptable?

A35: Yes, separate individual batteries are acceptable in lieu of a battery pack. Please see revisions to Technical Specifications in Attachment A of this Amendment.

Q36: If there is no minimum order, would Bidders be required to break cases if customer only wanted one pump kit, for example?

A36: Although there is no minimum order requirement, customers will be required to order product in the pack sizes specified in the bid.

Q37: Who is responsible for shipping costs with free pump cleanings?

A37: Customer is responsible for shipping costs to the Contractor and Contractor is responsible for shipping cost back to the customer.

ALL OTHER TERMS, CONDITIONS, AND SPECIFICATIONS REMAIN UNCHANGED

Attachments: Attachment A- Revised Technical Specifications Table, Section 6.2.11

Attachment B- State specific terms and conditions

Bidders must complete the following information:

Company Name: _____

Company Authorized Representative: _____

Signature

Date

Bid Opening Date and Time

November 2, 2010 2:00 pm PDT

Melissa Cox, Contracts Specialist

Date

Attachment A - Revised Technical Specifications

Amendment 1
Attachment A .doc



STATE OF WASHINGTON
DEPARTMENT OF GENERAL ADMINISTRATION
OFFICE OF STATE PROCUREMENT

210 11th Ave SW Room 201GA Building • Olympia, Washington 98504-1017

<http://www.ga.wa.gov>

Issue Date: October 26, 2010

Invitation for Bid #01910

The State of Washington on behalf of

The Western States Contracting Alliance (WSCA)

A Multi-State Contract for:

Breast Pumps and Related Accessories

Amendment No. 2

Vendors are not required to submit Amendment No. 2 with their Bid Submittals

The purpose of this Amendment is:

1. To answer additional questions regarding solicitation # 01910 that Bidders have submitted via email since the Pre-Bid Conference held on October 20, 2010.
2. To require vendors to return a signed copy of Amendment #1 as part of their bid submittal. This requirement was not stated in Amendment #1.

The following additional questions have been submitted by Bidders. The corresponding answers are provided below each question, as follows:

Q1: Are the kits listed in the bid for use only with new pumps that are purchased?

A1: No, the volume listed on the Price Sheet Submittal represents estimated usage for kits that will be used with new and existing multi-user pumps that are being used by WIC clients.

Q2: Under section 6.2.5, if we are the manufacturer and do not need to submit additional documentation how would you like us to respond?

A2: If you are a manufacturer, you are not required to respond to Section 6.2.5 of the solicitation.

Q3: Under section 6.2.12 scoring: How will the analysis be conducted for the products under section one. Will you use the each price or the extended total? Secondly, will each product be evaluated on its own or in combination with other products in this section?

A3: For the Pricing Submittal, we will be using the extended total to determine bid totals. In section one, all of the extended totals will be added to come to a grand total. The grand total will be the basis for the cost evaluation.

Q4: Is there any information on size of orders and whether these can be shipped via truck if the orders are large enough, or if these are individual orders of a few boxes to most locations. I know this may be highly variable but perhaps there are some trends that could help. Is there any clustering of orders in order to estimate warehouse space needed as well as manpower. Do orders come mainly in the second and third quarters or are they paced all along the year?

A4: GA does not have the information in the format you are requesting, but we can certainly share Medela's sales information with you that lists transactions, by state and by facility. Please see the file imbedded in Attachment A of this Amendment.

Attachment A- Sales Information Contract # 10305

Wsca 2008-2009
6-28-10.xls



STATE OF WASHINGTON
DEPARTMENT OF GENERAL ADMINISTRATION
OFFICE OF STATE PROCUREMENT

210 11th Ave SW Room 201GA Building • Olympia, Washington 98504-1017

<http://www.ga.wa.gov>

Issue Date: October 26, 2010

Invitation for Bid #01910

The State of Washington on behalf of

The Western States Contracting Alliance (WSCA)

A Multi-State Contract for:

Breast Pumps and Related Accessories

Amendment No. 3

Vendors must submit a signed copy of Amendment No. 3 with their Bid Submittal

IFB # 01910 is amended to incorporate state specific terms and conditions for the states of Arizona and Oklahoma.

All other terms, conditions, and specifications remain unchanged.

Bidders must complete the following information:

Company Name: _____

Company Authorized Representative: _____

Signature

Date

Bid Opening Date and Time

November 2, 2010 2:00 pm PDT

Melissa Cox, Contracts Specialist

Date

UNIFORM TERMS AND CONDITIONS

Version 7

- 1 **Definition of Terms.** As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:
 - 1.1 "Attachment" means any item the Solicitation requires the Offeror to submit as part of the Offer.
 - 1.2 "Contract" means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.
 - 1.3 "Contract Amendment" means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
 - 1.4 "Contractor" means any person who has a Contract with the State.
 - 1.5 "Days" means calendar days unless otherwise specified.
 - 1.6 "Exhibit" means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
 - 1.7 "Gratuity" means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
 - 1.8 "Materials" means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
 - 1.9 "Procurement Officer" means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.
 - 1.10 "Services" means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
 - 1.11 "Subcontract" means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
 - 1.12 "State" means the State of Arizona and Department or Agency of the State that executes the Contract.
 - 1.13 "State Fiscal Year" means the period beginning with July 1 and ending June 30,
- 2 **Contract Interpretation**
 - 2.1 Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.

- 2.2 Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
- 2.3.1 Special Terms and Conditions;
 - 2.3.2 Uniform Terms and Conditions;
 - 2.3.3 Statement or Scope of Work;
 - 2.3.4 Specifications;
 - 2.3.5 Attachments;
 - 2.3.6 Exhibits;
 - 2.3.7 Documents referenced or included in the Solicitation.
- 2.4 Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6 No Parol Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

3 Contract administration and operation.

- 3.1 Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 Audit. Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

- 3.5 Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6 Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7 Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.

3.8 Ownership of Intellectual Property

Any and all intellectual property, including but not limited to copyright, invention, trademark, trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of the contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.

4 Costs and Payments

- 4.1 Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2 Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3 Applicable Taxes.
- 4.3.1 Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2 State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3 Tax Indemnification. Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor

shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

- 4.3.4 IRS W9 Form. In order to receive payment the Contractor shall have a current IRS W9 Form on file with the State of Arizona, unless not required by law.
- 4.4 Availability of Funds for the Next State fiscal year. Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5 Availability of Funds for the current State fiscal year. Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
- 4.5.1 Accept a decrease in price offered by the, contractor
- 4.5.2 Cancel the Contract
- 4.5.3 Cancel the contract and re-solicit the requirements.

5 Contract changes

- 5.1 Amendments. This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2 Subcontracts. The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.
- 5.3 Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

6 Risk and Liability

- 6.1 Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.
- 6.2 Indemnification
- 6.2.1 Contractor/Vendor Indemnification (Not Public Agency) The parties to this contract agree that the State of Arizona, its' departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its' departments, agencies, boards and commissions shall be responsible for its' own negligence. Each party to this contract is responsible for its' own negligence.

- 6.2.2 Public Agency Language Only Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its' officers, officials, agents, employees, or volunteers."
- 6.3 Indemnification - Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.
- 6.4 Force Majeure.
- 6.4.1 Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.
- 6.4.2 Force Majeure shall not include the following occurrences:
- 6.4.2.1 Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
- 6.4.2.2 Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
- 6.4.2.3 Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- 6.4.3 If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- 6.4.4 Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- 6.5 Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this

Contract.

7 Warranties

- 7.1 Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2 Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
- 7.2.1 Of a quality to pass without objection in the trade under the Contract description;
 - 7.2.2 Fit for the intended purposes for which the materials are used;
 - 7.2.3 Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
 - 7.2.4 Adequately contained, packaged and marked as the Contract may require; and
 - 7.2.5 Conform to the written promises or affirmations of fact made by the Contractor.
- 7.3 Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4 Inspection/Testing. The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5 Year 2000.
- 7.5.1 Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of *force majeure* shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.
 - 7.5.2 Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system, or that the information technology products being acquired perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Contract. In addition, the defense of *force majeure* shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.
- 7.6 Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall

maintain all applicable licenses and permit requirements.

7.7 Survival of Rights and Obligations after Contract Expiration or Termination.

7.7.1 Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.

7.7.2 Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

8. **State's Contractual Remedies**

8.1 Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.

8.2 Stop Work Order.

8.2.1 The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

8.2.2 If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.

8.3 Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.

8.4 Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.

8.5 Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

9 Contract Termination

- 9.1 Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2 Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3 Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4 Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5 Termination for Default.
- 9.5.1 In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- 9.5.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- 9.5.3 The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in

procuring materials or services in substitution for those due from the Contractor.

- 9.6 Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 10 **Contract Claims.** All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.
- 11 Arbitration.
The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).
- 12 **Comments Welcome.** The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 104, Phoenix, Arizona, 85007.



INTENT TO PARTICIPATE
Cooperative Contract(s) for Breast Pumps and Accessories

I. PURPOSE:

The purpose of this Agreement is to provide the members of the Western States Contracting Alliance (WSCA) and other interested NASPO states with the opportunity to participate in multi-state cooperative contract(s) for Breast Pumps and Accessories.

II. SCOPE OF THE CONTRACT(S)

The State of Washington is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for Breast Pumps and Accessories. The resulting contracts will be permissive contracts.

Administrative Fee

A WSCA administrative fee of one-half of one percent (.5%) will be assessed centrally for purchases under the contract. Individual states may optionally add their administrative fee (if any) when the state executes its Participating Addendum.

III. TERM OF THE CONTRACT

The initial contract will be established for two (2) years from date of award, with annual renewal contract extension options for a total potential contract of six (6) years.

IV. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION

The solicitation and contract development shall be accomplished in compliance with the WSCA and NASPO Agreement of Understanding, incorporated herein by reference.

Solicitation Publication Period

Bidders/offerors will be given over 21 days after publication to submit proposals.

Solicitation Type and Evaluation Criteria

This IFB will be issued and evaluated in concert with the procurement laws and rules of the State of Washington by a sourcing team composed of members from several states.

Award(s): The solicitation will permit multiple awards.

Additional Requested Information

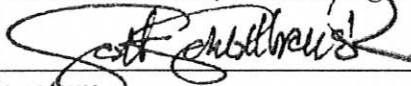
State Specific Terms and Conditions: If the participating state wishes to include any State specific terms and conditions with the release of this RFP, please attach those with this Intent to Participate.

Annual Estimated Volume: Please indicate your estimated annual volume of potential purchase under this proposed contract. \$ 223,902.00 / Year

SIGNATURE

State of Oklahoma

Scott Schlotthauer, State Purchasing Director
Scott Schlotthauer, Purchasing Director


Signature

10/06/2010
Date

Please scan and email the signed "Intent to Participate" document by:
Tuesday, Sept. 28, 2010 to:

Douglas Richins
WSCA Cooperative Development Director
DRichins@AMRms.com

STATE OF OKLAHOMA MANAGEMENT FEE AND QUARTERLY SALES REPORTING.

Pursuant to Oklahoma State Statute Title 74, Chapter 4, Section 85.33B The State Purchasing Director may enter into or award contracts that provide a contract management fee, levy or rebate to the Department of Central Services. The State Purchasing Director shall ensure that a contract that provides a management fee, levy or rebate provides value to acquiring agencies exceeding open market acquisition costs. Pursuant to this statute, the State Purchasing Director hereby imposes a management fee on this Statewide Contract, SW774 Breast Pumps, (NASPO / WSCA) Contract. The State of Washington is the lead state.

MANAGEMENT FEE	
Management Fee Percentage:	One Percent (1%)

By executing this Statute, the parties agree that the management fee identified in the table above has been included in new contract pricing, which new contract pricing has been approved by The State Purchasing Director and will become effective upon the Effective date of the agreement. The Management fee (hereinafter, "the Fee") will be collected by Contractor on all sales pursuant to this Statewide Contract placed on or after the "Effective Date" defined above. The Fee shall be remitted by Contractor to The State Purchasing Director as further described below.

Quarterly Payment and Sales Reporting Requirements. The parties agree that the collected Fees and the corresponding Quarterly Sales Report, which identifies the total sales pursuant to this Statewide Contract for the corresponding fiscal quarter, shall be submitted by Contractor to the Central Purchasing Director. The total sales reported in the Quarterly Sales Report should be limited to sales in which the Contractor has received payment from any state authorized customer. The Fees and the Quarterly Sales Report must be received by the State Purchasing Director on or before the Contractor's Payment Due Date as defined in the table below:

Fiscal Quarters	Months	Contractor's Payment Payment Due Date
Quarter 1	July 1 st – September 30 th	<u>October 31st</u>
Quarter 2	October 1 st – December 31 st	<u>January 31st</u>
Quarter 3	January 1 st – March 31 st	<u>April 30th</u>
Quarter 4	April 1 st – June 30 th	<u>July 31st</u>
-----	-----	<u>30 calendar days following the termination of this Statewide Contract for any reason</u>

The Quarterly Sales Report must be in Excel spreadsheet format and must contain the following fields: Agency Name, Agency Location, Group#, Acct#, MD#, NDC#, Mfg Description, Item Quantity, Extended Quantity, Unit Price, Extended Price, Quarterly Total Dollars, Total Mgt Fee Off Contract Price.

At the end of each state fiscal quarter as defined above, Contractor shall prepare the Quarterly Sales Report. In the event no sales have occurred, the Contractor must complete and submit the Quarterly Sales Report, indicating no sales have occurred. No later than the date identified above as the "Contractor's Payment Due Date" for each fiscal quarter, Contractor shall remit a check payable to the Oklahoma Department of Central Services, Central Purchasing Division for the Fees, which check shall include the note "Management Fee" and the contract number. Contractor shall remit the check together with the Quarterly Sales Report to:

(U.S. POSTAL SERVICE)

Oklahoma Department of Central Services,
Central Purchasing Division
P.O. Box 528803
Oklahoma City, OK 73152

(COMMON CARRIER)

Oklahoma Department of Central Services,
Central Purchasing Division
2401 N. Lincoln, Ste 116
Oklahoma City, OK 73105

In no event shall Contractor retain any amount of money in excess of the compensation to which Contractor is entitled and all Fees owed the Oklahoma Department of Central Services, Central Purchasing Division shall be paid within thirty (30) calendar days of termination of this Statewide Contract for any reason.

Modifying or Canceling the Fee. The State Purchasing Director reserves the right to modify and/or cancel the Fee at any time. Contractor shall immediately amend the Statewide Contract pricing to reflect any modification or cancellation of the Fee by The State Purchasing Director. In addition, The State Purchasing Director reserves the right to revise collection and reporting requirements in conjunction with implementation of an on-line procurement system.

Late Payment Fee. In the event The State Purchasing Director does not receive the Contractor's payment of the Fees on or before the Contractor's Payment Due Date, the parties agree that the State Purchasing Director may determine that the Contractor must pay the interest on the overdue Fees at a rate of : 0.36 percent per annum, computed on a 360 day calendar, or \$0.0010 per \$100 per day, which will be in effect upon start of agreement. This interest rate is provided by the State Treasurer based on the average interest rate for 30 day time deposits of State funds during the last calendar quarter of the last preceding fiscal year. (Titles 62, § 41.4a & 4b and 74, § 840.14. and OSF Prompt Payment Rules/Regulations).

For the purposes of this provision, payment of the Fees shall be considered received by The State Purchasing Director on (1) the date of State Purchasing

Director receipt of the EFT confirmation or (2) the date State Purchasing Director receives the envelope containing a check for the correct amount of the administrative fee. In the event the Contractor does not submit full payment of the Fees owed, interest shall only be applicable to the portion of the Fees which is outstanding. In the event the Contractor makes an error and overpays, the Contractor is responsible for alerting the State Purchasing Director in writing of the Contractor's discovery of the overpayment. The State Purchasing Director will confirm whether an overpayment has occurred and refund the overpayment amount to the Contractor no later than thirty (30) days' following The State Purchasing Director's receipt of written notice of the overpayment. The State Purchasing Director will have no responsibility for interest or any other fees with respect to Contractor's overpayment of Fees.



STATE OF WASHINGTON
DEPARTMENT OF GENERAL ADMINISTRATION
OFFICE OF STATE PROCUREMENT

210 11th Ave SW Room 201GA Building • Olympia, Washington 98504-1017

<http://www.ga.wa.gov>

Issue Date: October 26, 2010

Invitation for Bid #01910

**The State of Washington on behalf of
The Western States Contracting Alliance (WSCA)**

A Multi-State Contract for:

Breast Pumps and Related Accessories

Amendment No. 4

**Vendors must submit a signed copy of Amendment No. 4 with their Bid
Submittal**

IFB # 01910 is amended to incorporate state specific terms and conditions for the states of New Jersey and Vermont. System limitations did not allow this language to be uploaded with Amendment No. 3.

All other terms, conditions, and specifications remain unchanged.

Bidders must complete the following information:

Company Name: _____

Company Authorized Representative: _____

Signature

Date

Bid Opening Date and Time

November 2, 2010 2:00 pm PDT

Melissa Cox, Contracts Specialist

Date

State of New Jersey Standard Terms and Conditions

Applicable to all advertised DPP Procurements unless otherwise indicated

STANDARD TERMS AND CONDITIONS:

- I. Unless the bidder is specifically instructed otherwise in the Request for Proposal, the following terms and conditions will apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the Request for Proposal (RFP) and should be read in conjunction with same unless the RFP specifically indicates otherwise. If a bidder proposes changes or modifications or takes exception to any of the State's terms and conditions, the bidder must so state specifically in writing in the bid proposal. Any proposed change, modification or exception in the State's terms and conditions by a bidder will be a factor in the determination of an award of a contractor purchase agreement.
- II. All of the State's terms and conditions will become a part of any contract(s) or order(s) awarded as a result of the Request for Proposal, whether stated in part, in summary or by reference. In the event the bidder's terms and conditions conflict with the State's, the State's terms and conditions will prevail, unless the bidder is notified in writing of the State's acceptance of the bidder's terms and conditions.
- III. The statutes, laws or codes cited are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.
- IV. If awarded a contract or purchase agreement, the bidder's status shall be that of any independent principal and not as an employee of the State.

1. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

- 1.1 BUSINESS REGISTRATION** – As a condition to entering into a State contract, effective January 18, 2010, pursuant to an amendment to N.J.S.A. 52:32-44, State and local entities (including the Division of Purchase and Property) are prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the bid proposal has a valid Business Registration Certificate on file with the Division of Revenue.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.htm>.

- 1.2 ANTI-DISCRIMINATION** - All parties to any contract with the State of New Jersey agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A.10:5-1 et seq. and N.J.S.A.10:5-31 through 10:5-38, and all rules and regulations issued there under.

- 1.3 PREVAILING WAGE ACT** - The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.26 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on this proposal is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by this proposal has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his guarantee that he and any subcontractors he might employ to perform the work covered by this proposal will comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

- 1.3(a) PUBLIC WORKS CONTRACTOR REGISTRATION ACT** - The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractors who bid on or engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464 or <http://www.nj.gov/labor/lse/lspubcon.html>.

- 1.4 AMERICANS WITH DISABILITIES ACT** - The contractor must comply with all provisions of the Americans With Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101 et seq.

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- 1.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT** - The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the Act.
- 1.6 OWNERSHIP DISCLOSURE** - Contracts for any work, goods or services cannot be issued to any corporation or partnership unless prior to or at the time of bid submission the bidder has disclosed the names and addresses of all its owners holding 10% or more of the corporation or partnership's stock or interest. Refer to N.J.S.A. 52:25-24.2.
- 1.7 COMPLIANCE - LAWS** - The contractor must comply with all local, state and federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.
- 1.8 COMPLIANCE - STATE LAWS** - It is agreed and understood that any contracts and/or orders placed as a result of this proposal shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY.
- 1.9 COMPLIANCE - CODES** - The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor will be responsible for securing and paying all necessary permits, where applicable.

2. LIABILITIES

- 2.1 LIABILITY - COPYRIGHT** - The contractor shall hold and save the State of New Jersey, its officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of his contract.
- 2.2 INDEMNIFICATION** - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract. This indemnification obligation is not limited by, but is in addition to the insurance obligations contained in this agreement.
- 2.3 INSURANCE** - The contractor shall secure and maintain in force for the term of the contract liability insurance as provided herein. The Contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof, naming the State as an Additional Insured and shall contain the provision that the insurance provided in the certificate shall not be canceled for any reason except after thirty days written notice to:
- STATE OF NEW JERSEY
Purchase Bureau - Bid Ref. #

The insurance to be provided by the contractor shall be as follows:

- a. Comprehensive General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Comprehensive General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as Additional Insureds. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic, unamended, and unendorsed Comprehensive General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.
- b. Automobile liability insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.
- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
 - \$1,000,000 BODILY INJURY, EACH OCCURRENCE
 - \$1,000,000 DISEASE EACH EMPLOYEE
 - \$1,000,000 DISEASE AGGREGATE LIMIT

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3. TERMS GOVERNING ALL PROPOSALS TO NEW JERSEY PURCHASE BUREAU

3.1 CONTRACT AMOUNT - The estimated amount of the contract(s), when stated on the Advertised Request for Proposal form, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of this Request for Proposal or any contract entered into as a result of this Request for Proposal.

3.2 CONTRACT PERIOD AND EXTENSION OPTION - If, in the opinion of the Director of the Division of Purchase and Property, it is in the best interest of the State to extend a contract entered into as a result of this Request for Proposal, the contractor will be so notified of the Director's Intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director's request to extend the contract. If the contractor agrees to the extension, all terms and conditions of the original contract, including price, will be applicable.

3.3 BID AND PERFORMANCE SECURITY

a. Bid Security - If bid security is required, such security must be submitted with the bid in the amount listed in the Request for Proposal, see N.J.A.C. 17: 12- 2.4. Acceptable forms of bid security are as follows:

1. A properly executed individual or annual bid bond issued by an insurance or security company authorized to do business in the State of New Jersey, a certified or cashier's check drawn to the order of the Treasurer, State of New Jersey, or an irrevocable letter of credit drawn naming the Treasurer, State of New Jersey as beneficiary issued by a federally insured financial institution.
2. The State will hold all bid security during the evaluation process. As soon as is practicable after the completion of the evaluation, the State will:
 - a. Issue an award notice for those offers accepted by the State;
 - b. Return all bond securities to those who have not been issued an award notice.

All bid security from contractors who have been issued an award notice shall be held until the successful execution of all required contractual documents and bonds (performance bond, insurance, etc. If the contractor fails to execute the required contractual documents and bonds within thirty (30) calendar days after receipt of award notice, the contractor may be found in default and the contract terminated by the State. In case of default, the State reserves all rights inclusive of, but not limited to, the right to purchase material and/or to complete the required work in accordance with the New Jersey Administrative Code and to recover any actual excess costs from the contractor. Collection against the bid security shall be one of the measures available toward the recovery of any excess costs.

b. Performance Security - If performance security is required, the successful bidder shall furnish performance security in such amount on any award of a term contractor line item purchase, see N.J.A.C. 17: 12- 2.5. Acceptable forms of performance security are as follows:

1. The contractor shall be required to furnish an irrevocable security in the amount listed in the Request for Proposal payable to the Treasurer, State of New Jersey, binding the contractor to provide faithful performance of the contract.
2. The performance security shall be in the form of a properly executed individual or annual performance bond issued by an insurance or security company authorized to do business in the State of New Jersey, a certified or cashier's check drawn to the order of the Treasurer, State of New Jersey, or an irrevocable letter of credit drawn naming the Treasurer, State of New Jersey as beneficiary issued by a federally insured financial institution.

The Performance Security must be submitted to the State within 30 days of the effective date of the contract award and cover the period of the contract and any extensions thereof. Failure to submit performance security may result in cancellation of contract for cause pursuant to provision 3.5b, 1, and nonpayment for work performed.

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3.4 VENDOR RIGHT TO PROTEST - INTENT TO AWARD - Except in cases of emergency, bidders have the right to protest the Director's proposed award of the contract as announced in the Notice of Intent to Award, see N.J.A.C. 17:12-3.3. Unless otherwise stated, a bidder's protest must be submitted to the Director within 10 working days after receipt of written notification that its bid has not been accepted or that an award of contract has been made. In the public interest, the Director may shorten this protest period, but shall provide at least 48 hours for bidders to respond to a proposed award. In cases of emergency, stated in the record, the Director may waive the appeal period. See N.J.A.C. 17:12-3 et seq.

3.5 TERMINATION OF CONTRACT

a. For Convenience

Notwithstanding any provision or language in this contract to the contrary, the Director may terminate at any time, in whole or in part, any contract entered into as a result of this Request for Proposal for the convenience of the State, upon no less than 30 days written notice to the contractor.

b. For cause:

1. Where a contractor fails to perform or comply with a contract, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract upon 10 days notice to the contractor with an opportunity to respond.
2. Where a contractor continues to perform a contract poorly as demonstrated by formal complaints, late delivery, poor performance of service, short-shipping etc., so that the Director is repeatedly required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq. the Director may terminate the contract upon 10 days notice to the contractor with an opportunity to respond.

c. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.

d. In the event of termination under this section, the contractor will be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

3.6 COMPLAINTS - Where a bidder has a history of performance problems as demonstrated by formal complaints and/or contract cancellations for cause pursuant to 3.5b a bidder may be bypassed for this award. See N.J.A.C. 17:12-2.8.

3.7 EXTENSION OF CONTRACT QUASI-STATE AGENCIES - It is understood and agreed that in addition to State Agencies, Quasi-State Agencies may also participate in this contract. Quasi-State Agencies are defined in N.J.S.A. 52:27B-56.1 as any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member.

3.8 EXTENSION OF CONTRACTS TO POLITICAL SUBDIVISIONS, VOLUNTEER FIRE DEPARTMENTS AND FIRST AID SQUADS, AND INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION - N.J.S.A. 52:25-16.1 permits counties, municipalities and school districts to participate in any term contract(s), that may be established as a result of this proposal.

N.J.S.A. 52:25-16.2 permits volunteer fire departments, volunteer first aid squads and rescue squads to participate in any term contract(s) that may be established as a result of this proposal.

N.J.S.A. 52:25-16.5 permits independent institutions of higher education to participate in any term contract(s) that may be established as a result of this proposal, provided that each purchase by the Independent Institution of higher education shall have a minimum cost of \$500.

In order for the State contract to be extended to counties, municipalities, school districts, volunteer fire departments, first aid squads and independent institutions of higher education the bidder must agree to the extension and so state in his bid. proposal. The extension to counties municipalities, school districts, volunteer fire departments, first aid squads and Independent Institutions of higher education must be under the same terms and conditions, including price, applicable to the State.

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3.9 EXTENSIONS OF CONTRACTS TO COUNTY COLLEGES - N.J.S.A. 18A:64A - 25. 9 permits any college to participate in any term contract(s) that may be established as a result of this proposal.

3.10 EXTENSIONS OF CONTRACTS TO STATE COLLEGES - N.J.S.A. 18A:64- 60 permits any State College to participate in any term contract(s) that may be established as a result of this proposal.

3.11 SUBCONTRACTING OR ASSIGNMENT - The contract may not be subcontracted or assigned by the contractor, in whole or in part, without the prior written consent of the Director of the Division of Purchase and Property. Such consent, if granted, shall not relieve the contractor of any of his responsibilities under the contract.

In the event the bidder proposes to subcontract for the services to be performed under the terms of the contract award, he shall state so in his bid and attach for approval a list of said subcontractors and an Itemization of the products and/or services to be supplied by them.

Nothing contained in the specifications shall be construed as creating any contractual relationship between any subcontractor and the State.

3.12 MERGERS, ACQUISITIONS - If, subsequent to the award of any contract resulting from this Request for Proposal, the contractor shall merge with or be acquired by another firm, the following documents must be submitted to the Director, Division of Purchase & Property.

- a. Corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices.
- b. State of New Jersey Bidders Application reflecting all updated information including ownership disclosure, pursuant to provision 1.5.
- c. Vendor Federal Employer Identification Number.

The documents must be submitted within thirty (30) days of completion of the merger or acquisition. Failure to do so may result in termination of contract pursuant to provision 3.5b.

If subsequent to the award of any contract resulting from this Request for Proposal, the contractor's partnership or corporation shall dissolve, the Director, Division of Purchase & Property must be so notified. All responsible parties of the dissolved partnership or corporation must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment should be made until all parties to the dissolved partnership or corporation submit the required documents to the Director.

3.13 PERFORMANCE GUARANTEE OF BIDDER - The bidder hereby certifies that:

- a. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
- b. All equipment supplied to the State and operated by electrical current is UL listed where applicable.
- c. All new machines are to be guaranteed as fully operational for the period stated in the Request For Proposal from time of written acceptance by the State. The bidder will render prompt service without charge, regardless of geographic location.
- d. Sufficient quantities of parts necessary for proper service to equipment will be maintained at distribution points and service headquarters.
- e. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.
- f. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract.

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- g. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

- 3.14 **DELIVERY GUARANTEES** - Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the Request for Proposal.

The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice.

Items delivered must be strictly in accordance with the Request for Proposal.

In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the Request for Proposal, the using agency may be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor failing to meet his commitments.

- 3.15 **DIRECTOR'S RIGHT OF FINAL BID ACCEPTANCE** - The Director reserves the right to reject any or all bids, or to award in whole or in part if deemed to be in the best interest of the State to do so. The Director shall have authority to award orders or contracts to the vendor or vendors best meeting all specifications and conditions in accordance with N.J.S.A. 52:34-12. Tie bids will be awarded by the Director in accordance with N.J.A.C. 17:12-2.1D.

- 3.16 **BID ACCEPTANCES AND REJECTIONS** - The provisions of N.J.A.C. 17:12-2.9, relating to the Director's right, to waive minor elements of non-compliance with bid specifications and N.J.A.C. 17: 12- 2.2 which defines causes for automatic bid rejection, apply to all proposals and bids.

- 3.17 **STATE'S RIGHT TO INSPECT BIDDER'S FACILITIES** - The State reserves the right to inspect the bidder's establishment before making an award, for the purposes of ascertaining whether the bidder has the necessary facilities for performing the contract.

The State may also consult with clients of the bidder during the evaluation of bids. Such consultation is intended to assist the State in making a contract award which is most advantageous to the State.

- 3.18 **STATE'S RIGHT TO REQUEST FURTHER INFORMATION** - The Director reserves the right to request all information which may assist him or her in making a contract award, including factors necessary to evaluate the bidder's financial capabilities to perform the contract. Further, the Director reserves the right to request a bidder to explain, in detail, how the bid price was determined.

- 3.19 **MAINTENANCE OF RECORDS** - The contractor shall maintain records for products and/or services delivered against the contract for a period of three (3) years from the date of final payment. Such records shall be made available to the State upon request for purposes of conducting an audit or for ascertaining information regarding dollar volume or number of transactions.

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- 3.20 ASSIGNMENT OF ANTITRUST CLAIM(S)** - The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the contractor;

- a. It will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder.
- b. It will advise the Attorney General of New Jersey:
 1. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
 2. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- c. It will notify the defendants in any antitrust suit of the fact of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice will be sent to the Attorney General of New Jersey.

Furthermore, it is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

4. TERMS RELATING TO PRICE QUOTATION

- 4.1 PRICE FLUCTUATION DURING CONTRACT** - Unless otherwise noted by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract.

In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director of Purchase and Property must be notified, in writing, of any price reduction within five (5) days of the effective date.

Failure to report price reductions will result in cancellation of contract for cause, pursuant to provision 3.5b.1.

- 4.2 DELIVERY COSTS** - Unless otherwise noted in the Request for Proposal, all prices for items in bid proposals are to be submitted F.O.B. Destination. Proposals submitted other than F.O.B. Destination may not be considered. Regardless of the method of quoting shipments, the contractor shall assume all costs, liability and responsibility for the delivery of merchandise in good condition to the State's using agency or designated purchaser.

F.O.B. Destination does not cover "spotting" but does include delivery on the receiving platform of the ordering agency at any destination in the State of New Jersey unless otherwise specified. No additional charges will be allowed for any additional transportation costs resulting from partial shipments made at contractor's convenience when a single shipment is ordered. The weights and measures of the State's using agency receiving the shipment shall govern.

- 4.3 C.O.D. TERMS** - C.O.D. terms are not acceptable as part of a bid proposal and will be cause for rejection of a bid.

- 4.4 TAX CHARGES** - The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

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4.5 PAYMENT TO VENDORS - Payment for goods and/or services purchased by the State will only be made against State Payment Vouchers. The State bill form in duplicate together with the original Bill of Lading, express receipt and other related papers must be sent to the consignee on the date of each delivery. Responsibility for payment rests with the using agency which will ascertain that the contractor has performed in a proper and satisfactory manner in accordance with the terms and conditions of the award. Payment will not be made until the using agency has approved payment.

For every contract the term of which spans more than one fiscal year, the State's obligation to make payment beyond the current fiscal year is contingent upon legislative appropriation and availability of funds.

The State of New Jersey now offers State contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State Agency's use of the p-card, however, is optional. P-card transactions do not require the submission of either a contractor invoice or a State payment voucher. Purchasing transactions utilizing the p-card will usually result in payment to a contractor in three days. A Contractor should take note that there will be a transaction processing fee for each p-card transaction. To participate, a contractor must be capable of accepting MasterCard. For more information, call your bank or any merchant services company.

4.6 NEW JERSEY PROMPT PAYMENT ACT - The New Jersey Prompt Payment Act N.J.S.A. 52:32-32 et seq. requires state agencies to pay for goods and services within sixty (60) days of the agency's receipt of a properly executed State Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the state prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest will not be paid until it exceeds \$5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

4.7 RECIPROCITY - In accordance with N.J.S.A. 52:32-1.4 and N.J.A.C. 17: 12- 2. 13, the State of New Jersey will invoke reciprocal action against an out-of-State bidder whose state or locality maintains a preference practice for their bidders.

5. CASH DISCOUNTS - Bidders are encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the lowest bid.

- a. Discount periods shall be calculated starting from the next business day after the recipient has accepted the goods or services received a properly signed and executed State Payment Voucher form and, when required, a properly executed performance security, whichever is latest.
- b. The date on the check issued by the State in payment of that Voucher shall be deemed the date of the State's response to that Voucher.

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6. STANDARDS PROHIBITING CONFLICTS OF INTEREST - The following prohibitions on vendor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
- b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
- c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
- d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- f. The provisions cited above in paragraph 6a through 6e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 6c.

7. NOTICE TO ALL BIDDERS SET-OFF FOR STATE TAX NOTICE

Please be advised that, pursuant to P.L. 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c. 184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

State of New Jersey
Standard Terms and Conditions

Applicable to all advertised DPP Procurements unless otherwise indicated

8. **APPLICABLE LAW** - This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles.

State of Vermont
Additional Terms and Conditions to the NASPO Terms and Conditions and Required Forms
Cooperative Procurements

1. **Confidentiality:** The successful response will become part of the contract file and will become a matter of public record as will all other responses received. If the response includes material that is considered by the bidder to be proprietary and confidential under 1 VSA, Chapter 5, the bidder shall clearly designate the material as such, explaining why such material should be considered confidential. The bidder must identify each page or section of the response that it believes is proprietary and confidential with sufficient grounds to justify each exemption from release, including the prospective harm to the competitive position of the bidder if the identified material were to be released. Under no circumstances can the entire response or price information be marked confidential. Responses so marked may not be considered.

2. **Appropriations:** If this contract extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this contract, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of exiting appropriation authority.

3. **Independence, Liability:** The Contractor will act in an independent capacity and not as officers or employees of the State.

The Contractor shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Contractor or of any agent of the Contractor. The State shall notify the Contractor in the event of any such claim or suit, and the Contractor shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Contractor may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Contractor shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Contractor.

The Contractor shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Contractor.

4. **Insurance:** Before commencing work on this contract the contractor must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the contractor to maintain current certificates of insurance on file with the state through the term of the contract.

Workers Compensation: With respect to all operations performed, the contractor shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

General Liability and Property Damage: With respect to all operations performed under the contract, the contractor shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations
Products and Completed Operations
Personal Injury Liability
Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence
\$1,000,000 General Aggregate
\$1,000,000 Products/Completed Operations Aggregate
\$ 50,000 Fire/ Legal/Liability

Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this contract.

Automotive Liability: The contractor shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the contract. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this contract.

No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the contractor for the contractor's operations. These are solely minimums that have been established to protect the interests of the State.

5. **Set Off:** The State may set off any sums which the Contractor owes the State against any sums due the Contractor under this contract; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.
6. **No Gifts or Gratuities:** Contractor shall not give title, or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this contract.
7. **Certification for apparel, footwear, and textiles (sweatshop prohibition):** Before commencing work on this contract, the contractor must provide certification from each supplier that meets the requirements of 29 V.S.A. §922(a) as well as a list of the names and addresses of each supplier, as required by 29 V.S.A. §922(b). Contractor certifies that if, at any time during the contract period, there are changes to the information in the certification or to the list of suppliers the contractor will promptly inform the Commissioner of Buildings and General Services of such changes.

RFP:
DATE:

CERTIFICATE OF COMPLIANCE

This form must be completed in its entirety and submitted as part of the response for the proposal to be considered valid.

TAXES: Pursuant to 32 V.S.A. § 3113, bidder hereby certifies, under the pains and penalties of perjury, that the company/individual is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due to the State of Vermont as of the date this statement is made. A person is in good standing if no taxes are due, if the liability for any tax that may be due is on appeal, or if the person is in compliance with a payment plan approved by the Commissioner of Taxes.

INSURANCE: Bidder certifies that the company/individual is in compliance with, or is prepared to comply with, the insurance requirements as detailed in Section 4 of the State of Vermont Additional Terms and Conditions to the NASPO Terms and Conditions and Required Forms Cooperative Procurements. Certificates of insurance must be provided prior to issuance of a contract and/or purchase order. If the certificate(s) of insurance is/are not received by the Office of Purchasing & Contracting within five (5) days of notification of award, the State of Vermont reserves the right to select another vendor. Please reference the RFP and/or RFQ # when submitting the certificate of insurance.

CERTIFICATION FOR APPAREL, FOOTWEAR, AND TEXTILES (SWEATSHOP PROHIBITION): Bidder certifies that the company/individual is in compliance with the requirements as detailed in Section 7 of the State of Vermont Additional Terms and Conditions to the NASPO Terms and Conditions and Required Forms Cooperative Procurements. The contractor must provide certification from each supplier that meets the requirements of 29 V.S.A. §922(a) as well as a list of the names and addresses of each supplier, as required by 29 V.S.A. §922(b). Contractor certifies that if, at any time during the contract period, there are changes to the information in the certification or to the list of supplier the contractor will promptly inform the Commissioner of Buildings and General Services of such changes. The state reserves the right to ask for additional information and / or certifications any time during the contract period. Failure of the vendor to comply with any provision of this certification will be considered a default of the vendor's contract obligations.

CONTRACT TERMS: The undersigned hereby acknowledges and agrees to the State of Vermont Additional Terms and Conditions to the NASPO Terms and Conditions and Required Forms Cooperative Procurements.

TERMS OF SALE: The undersigned agrees to furnish the products or services listed at the prices quoted. The Terms of Sales are Net 30 days from receipt of service or invoice, whichever is later. Percentage discounts may be offered for prompt payments of invoices, however such discounts must be in effect for a period of 30 days or more in order to be considered in making awards.

FORM OF PAYMENT: Would you accept the Visa Purchasing Card as a form of payment? ____ Yes ____ No

Insurance Certificate(s): Attached _____

Will provide upon notification of award _____

Delivery Offered: _____ days after notice of award

Terms of Sale: _____
(If Discount)

Quotation Valid for: _____ days

Date: _____

Name of Company: _____

Contact Name: _____

Address: _____

Fax Number: _____

E-mail: _____

By: _____
Signature (Bid Not Valid Unless Signed)

Name: _____
(Type or Print)

All returned quotes and related documents must be identified with our request for quote number.

Offshore Outsourcing Questionnaire

Vendors must indicate whether or not any services are or will be performed in a country other than the United States. Indicate N/A if not applicable.

Services:

Proposed Service to be Outsourced	Bid Total	Offshore Dollars	Represents what % of total Contract Dollars	Outsourced Work Location (Country)	Subcontractor

If any or all of the services are or will be outsourced offshore, Vendors are required to provide a cost estimate of what the cost would be to provide the same services onshore and/or in Vermont.

Proposed Service to be Outsourced	Bid Total if provided Onshore	Bid Total if provided in Vermont	Cost Impact	Onshore Work Location	Subcontractor

Name of Bidder: _____ Signature of Bidder: _____ Date _____

ENVIRONMENTAL INFORMATION FORM
June 1, 2008

RECYCLED MATERIALS OR PRODUCTS:

All bidders are to complete the following information in reference to each item being quoted. Additional pages may be used if necessary.

ITEM #	BRAND/MANUFACTURER	% OF RECYCLED CONTENT	% POST CONSUMER CONTENT

MERCURY CONTENT CERTIFICATION:

The undersigned hereby certifies that none of the items quoted in this RFQ/RFP and any contract issued as a result contain mercury except as identified below. Bidders shall also specify the amount of mercury contained in any of the products listed below. Additional pages may be used if necessary.

ITEM	PART #	MERCURY CONTENT

Name of Bidder:

Signature of Bidder:

Date:

TOWNS AND SCHOOLS QUESTIONNAIRE

PROVISIONS FOR THE PURCHASE OF SUPPLIES, MATERIALS, AND EQUIPMENT FOR TOWNS, SCHOOLS, POLITICAL SUBDIVISIONS, AND INDEPENDENT COLLEGES¹ OF THE STATE OF VERMONT

The Office of Purchasing & Contracting keeps a current file of the contracts that are available to the political subdivisions and colleges. We are continually interested in expanding this file and would appreciate a positive response to the following questions:

1. Will you furnish these products and services to the political subdivisions of the State of Vermont at the same prices, terms and conditions as you quoted in this response? Yes _____ No _____

If no, kindly outline below the prices, terms, and conditions under which you will agree to supply these needs.

2. Will you furnish these products and services to the independent colleges of the State of Vermont at the same prices, terms and conditions as you quoted in this response? Yes _____ No _____

If no, kindly outline below the prices, terms, and conditions under which you will agree to supply these needs.

It should be noted that if you agree to extend these contract terms and prices to the political subdivisions or to independent colleges, all such items furnished will be billed directly to and paid for by the political subdivision or college and neither the State of Vermont, nor its Commissioner of Buildings and General Services, personally or officially, assumes any responsibility.

RESPONSE TITLE:

FIRM NAME:

DATE:

BY:

¹Independent Colleges are "any institution of higher education chartered in VT and accredited or holding a certificate of approval from the State Board of Education."



STATE OF WASHINGTON
DEPARTMENT OF GENERAL ADMINISTRATION
OFFICE OF STATE PROCUREMENT

210 11th Ave SW Room 201GA Building • Olympia, Washington 98504-1017

<http://www.ga.wa.gov>

Issue Date: October 28, 2010

Invitation for Bid #01910

**The State of Washington on behalf of
The Western States Contracting Alliance (WSCA)**

A Multi-State Contract for:

Breast Pumps and Related Accessories

Amendment No. 5

A signed copy of this Amendment must be returned with Bid Submittal.

The purpose of this Amendment is:

- 1. To Extend the Bid closing date from 2 pm PDT on November 2, 2010 to 2 pm PDT on November 4, 2010.**
- 2. To respond to a Bidder request regarding the WHO Code. Please see question and corresponding answer below**

Q1: GA received a request to include language in the solicitation that would require Bidders to be compliant with the World Health Organization (WHO) Code on the marketing of breast milk substitutes to mothers, physicians, healthcare workers, etc.

A1: Although the members of the Sourcing Team and the State of Washington adamantly support the provisions of the WHO Code, the requirement to comply with the Code will not be added to the solicitation, as the State does not have statutory authority to enforce the Code.

General Administration has been in contact with NABA and they fully understand the predicament that we are in with regards to the Code and the State's inability to enforce it. As a result, we have developed a great solution that will allow NABA to notify Participating Entities of any vendors that they feel are in violation of the Code, once the contract has been awarded.

ALL OTHER TERMS, CONDITIONS, AND SPECIFICATIONS REMAIN UNCHANGED

Bidders must complete the following information:

Company Name: _____

Company Authorized Representative: _____

Signature

Date

Bid Opening Date and Time

~~November 2, 2010 2:00 pm PDT~~

November 4, 2010, 2:00 pm PDT

Melissa Cox, Contracts Specialist

Date



STATE OF WASHINGTON
DEPARTMENT OF GENERAL ADMINISTRATION
OFFICE OF STATE PROCUREMENT

210 11th Ave SW Room 201GA Building • Olympia, Washington 98504-1017

<http://www.ga.wa.gov>

Issue Date: October 29, 2010

Invitation for Bid #01910

**The State of Washington on behalf of
The Western States Contracting Alliance (WSCA)**

A Multi-State Contract for:

Breast Pumps and Related Accessories

Amendment No. 6

A signed copy of this Amendment must be returned with Bid Submittal.

The purpose of this Amendment is:

1. To allow Bidders to submit pricing on a one or two-handed manual breast pump under Section One, Item No. 4.0 of the Price Sheet Submittal embedded in Section 6.2.12 of the Solicitation document. This modification will align the requirements of the Pricing Submittal with the Technical Specifications; Item No. 4 *Manual Breast Pump*, which allows for the submittal of a one or two-handed manual breast pump.
2. Modify the definition of the Multi-User Breast Pump listed in Appendix C *Standard Definitions*.

As a result, IFB # 01910 is amended as follows:

1. The description for Item No. 4.0 of the Price Sheet Submittal is modified to read:

MANUAL BREAST PUMP- One or Two-Handed

2. The definition of the Multi-User Breast Pump in Appendix C Standard Definitions is replaced in its entirety with the following language:

"A multi-user breast pump is defined as a hospital grade unit that operates on a "closed system", meaning that it is impossible for milk to reach the motor. Multi-user pumps have special barriers and filters to prohibit milk from entering the pump motor, which prevents cross-contamination."

ALL OTHER TERMS, CONDITIONS, AND SPECIFICATIONS REMAIN UNCHANGED

Bidders must complete the following information:

Company Name: _____

Company Authorized Representative: _____

Signature

Date

Bid Opening Date and Time

November 4, 2010, 2:00 pm PDT

Melissa Cox, Contracts Specialist

Date